1-6-87
Vol. 52 No. 3
Pages 389-516

Federal Register

Tuesday
January 6, 1987

Briefings on How To Use the Federal Register—
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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 18 at 9:30 a.m.

WHERE: National Archives Theater, 8th and Pennsylvania Avenue NW., Washington, DC

RESERVATIONS: Laurice Clark, 202-523-3419.

NEW YORK, NY

WHEN: December 5 at 10:00 a.m.,

WHERE: Room 305A, 26 Federal Plaza, New York, NY

RESERVATIONS: Arlene Shapiro or Stephen Colon, New York Federal Information Center 212-264-4810.

PITTSBURGH, PA

WHEN: December 8 at 1:30 p.m.,

WHERE: Room 2212, William S. Moorehead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA

RESERVATIONS: Kenneth Jones or Lydia Shaw
Pittsburgh: 412-644-INFO
Philadelphia. 215-597-1707 1709

Contents

Federal Register

Vol. 52, No. 3

Tuesday, January 6, 1987

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 1987

Correction

In the table of effective dates and time periods appearing in the Reader Aids section of the **Federal Register** of Friday, January 2, 1987, make the following correction: In the entry for January 20, the 90th day after publication should have read "April 20".

3 CFR

Administrative Orders:

Memorandums:

Jan. 2, 1987 389

Executive orders:

12462 (Amended by EO 12579) 515

12496 (Superseded by EO 12578) 505

12578 505

12579 515

7 CFR

Proposed Rules:

925 432

944 432

10 CFR

61 397

13 CFR

121 397

14 CFR

Proposed Rules:

39 435

15 CFR

399 405

16 CFR

1034 405

1750 405

21 CFR

178 406

26 CFR

1 409

Proposed Rules:

1 438

28 CFR

51 486

31 CFR

51 414

40 CFR

Proposed Rules:

228 438

43 CFR

3400 415

3470 415

45 CFR

801 416

47 CFR

2 417

15 417

22 417

25 417

90 417

50 CFR

611 (2 documents) 417, 422

672 422

675 422

Proposed Rules:

681 442

Federal Register
Vol. 52, No. 3
Tuesday, January 6, 1987

Presidential Documents

Title 3—

The President

Memorandum of January 2, 1987

Actions Concerning the Generalized System of Preferences

Memorandum for the United States Trade Representative

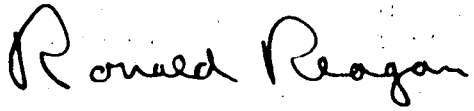
Pursuant to sections 502(b)(8) and 504 of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2462(b)(8) and 2464), I am hereby acting to modify the application of duty-free treatment under the Generalized System of Preferences (GSP) currently being afforded to certain beneficiary developing countries, and to make findings concerning steps by certain beneficiary developing countries to afford internationally recognized worker rights to workers in such countries.

Specifically, I have determined, under the provisions of section 504(c)(2) of the Act and after taking into account the factors listed in sections 501 and 502(c) of the Act (19 U.S.C. 2461 and 2462(c)), that certain beneficiary developing countries have demonstrated a sufficient degree of competitiveness (relative to other beneficiary developing countries) with respect to particular eligible articles that section 504(c)(2)(B) should apply to such articles. Such countries are enumerated in Annex A opposite the Tariff Schedules of the United States (TSUS) items applicable to each article.

Second, under the terms of section 504(c)(3) of the Act, I am hereby waiving the application of section 504(c) with respect to particular eligible articles from specified beneficiary developing countries. I have received the advice of the United States International Trade Commission as to any industries in the United States which would likely be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c) of the Act, that such waivers are in the national economic interest of the United States. The countries to be afforded such waivers for particular eligible articles are enumerated in Annex B opposite the TSUS items applicable to each article.

Finally, after considering various private sector requests for review concerning worker rights in certain beneficiary developing countries, and in accordance with section 502(b)(8) of the Act, I have determined that the following beneficiary developing countries have taken or are taking steps to afford internationally recognized worker rights (as defined in section 502(a)(4) of the Act): Guatemala, Haiti, the Republic of Korea, the Philippines, Suriname, Taiwan, and Zaire. However, I have determined that Romania, Paraguay, and Nicaragua, previously designated as beneficiary developing countries, are not taking steps to afford such internationally recognized worker rights. Therefore, I intend to notify the Congress of the United States of my intention to remove Romania and Nicaragua from the list of designated beneficiary developing countries for purposes of the GSP, and to suspend the GSP eligibility of Paraguay. Finally, I am continuing to review the status of such worker rights in another beneficiary developing country, Chile.

These determinations shall be published in the **Federal Register**.



THE WHITE HOUSE,
Washington, January 2, 1987.

Billing code 3195-01-M

Annex A

Determination of Sufficient Competitiveness

TSUS	Country
107.78	Taiwan
121.56	Argentina
130.32	Argentina
131.20	Argentina
135.30	Mexico
137.04	Mexico
141.98	Mexico
146.12	Argentina
148.30	Mexico
149.50	Mexico
152.54	Brazil
166.40	Mexico
167.05	Mexico
168.98	Mexico
192.21pt.	Columbia 1/
200.91	Mexico
202.66	Taiwan
206.30	Taiwan
222.50	Taiwan
240.14	Taiwan
245.20	Brazil
245.80	Mexico
315.25	Mexico
337.40	Hong Kong
	Rep. of Korea
355.81	Taiwan
389.61	Hong Kong
	Taiwan
402.12	Brazil
406.96	Brazil
407.19	Brazil
408.72	Rep. of Korea
	Taiwan
413.24	Rep. of Korea
416.45	Taiwan
418.18	Brazil
420.60	Mexico
421.06	Taiwan
425.82	Brazil
427.84	Brazil
428.58	Brazil
437.57	Mexico
439.50	Singapore
445.42	Taiwan
445.46	Mexico
490.94	Brazil
511.64	Mexico
515.61	Mexico
515.64	Mexico
517.24	Brazil
520.31	Brazil
520.61	Brazil
532.22	Rep. of Korea
	Taiwan
534.11	Taiwan
534.91	Taiwan
535.12	Mexico
535.31	Brazil
540.21	Mexico
542.77	Mexico
544.51	Taiwan
545.53	Taiwan
545.67	Taiwan
547.37	Taiwan
606.37	Brazil
606.44	Brazil
609.14	Brazil
610.65	Rep. of Korea
610.70	Taiwan
610.74	Rep. of Korea
	Taiwan
610.82	Rep. of Korea
	Taiwan
610.88	Taiwan
612.03	Mexico
612.62	Brazil
613.18	Taiwan
626.40	Mexico
632.42	Brazil
642.17	Rep. of Korea
642.45	Mexico
646.30	Rep. of Korea
646.65	Taiwan

1/ Includes 192.2110, 192.2120, 192.2130, 192.2140, 192.2150 and 192.2160.

TSUS	Country
646.72	Taiwan
646.92	Taiwan
646.95	Taiwan
646.97	Taiwan
647.03	Taiwan
647.05	Taiwan
648.80	Hong Kong Rep. of Korea Taiwan
648.85	Rep. of Korea Taiwan
648.89	Taiwan
648.93	Taiwan
648.95	Taiwan
649.37	Taiwan
650.21	Taiwan
650.89	Hong Kong
651.23	Taiwan
651.31	Taiwan
651.37	Hong Kong
651.46	Rep. of Korea
651.48	Hong Kong Rep. of Korea Taiwan
651.55	Taiwan
652.03	Rep. of Korea
652.24	Taiwan
653.00	Rep. of Korea
653.35	Taiwan
653.37	Taiwan
653.38	Taiwan
653.48	Taiwan
653.52	Taiwan
653.94	Rep. of Korea
653.96	Taiwan
654.00	Taiwan
654.08	Taiwan
654.25	Taiwan
654.30	Taiwan
654.35	Taiwan
654.45	Rep. of Korea Taiwan
654.60	Hong Kong Taiwan
654.70	Hong Kong
654.75	Taiwan
656.15	Mexico
657.35	Taiwan
657.40	Taiwan
660.42	Brazil
660.67	Brazil Mexico
660.71	Brazil
660.97	Singapore
661.06	Mexico
661.09	Singapore
661.20	Mexico
661.35	Rep. of Korea
661.67	Brazil
661.94	Hong Kong Taiwan
662.15	Argentina
664.08	Brazil
664.10	Mexico Taiwan
672.16	Taiwan
674.34	Rep. of Korea Taiwan
674.35	Taiwan
674.42	Taiwan
676.15	Rep. of Korea
676.20	Rep. of Korea Taiwan
676.30	Hong Kong
676.56	Taiwan
678.50	Brazil
680.14	Taiwan
680.19	Taiwan
683.01	Rep. of Korea Taiwan
683.12	Mexico

TSUS	Country
683.70	Hong Kong
	Taiwan
683.80	Hong Kong
684.10	Hong Kong
	Taiwan
684.40pt.	Hong Kong 1/
684.48	Taiwan
684.53	Taiwan
684.55	Taiwan
684.70	Rep. of Korea
685.06	Taiwan
685.14	Rep. of Korea
	Taiwan
685.18	Rep. of Korea
685.22	Hong Kong
	Rep. of Korea
685.32	Mexico
	Taiwan
685.39	Hong Kong
	Rep. of Korea
685.40	Hong Kong
	Taiwan
685.70	Hong Kong
686.18	Taiwan
686.90	Rep. of Korea
688.18	Taiwan
688.34	Hong Kong
	Taiwan
688.41	Hong Kong
688.42	Mexico
	Rep. of Korea

TSUS	Country
692.32	Rep. of Korea
692.60	Taiwan
703.72	Taiwan
705.82	Taiwan
705.83	Taiwan
706.61	Taiwan
708.47	Hong Kong
711.31	Brazil
712.49	Brazil
722.08	Hong Kong
	Rep. of Korea
	Taiwan
722.11	Hong Kong
	Rep. of Korea
723.30	Brazil
724.45	Hong Kong
	Mexico
725.01	Rep. of Korea
725.03	Rep. of Korea
725.32	Taiwan
725.46	Rep. of Korea
726.25	Taiwan
727.11	Taiwan
727.15	Taiwan
727.23	Taiwan
727.25	Taiwan
727.29	Taiwan
	Yugoslavia
727.35	Taiwan
727.40	Taiwan
727.47	Taiwan
727.59	Taiwan
727.65	Taiwan
727.86	Taiwan
730.29	Brazil
730.94	Rep. of Korea
731.70	Taiwan
732.52	Taiwan
732.62	Taiwan

1/ Includes 684.4010 and 684.4015.

TSUS	Country
734.15	Taiwan
734.20	Taiwan
734.25	Hong Kong
734.42	Brazil
734.77	Rep. of Korea
734.88	Taiwan
734.91	Taiwan
735.09	Rep. of Korea
	Taiwan
735.10	Taiwan
735.20	Rep. of Korea
737.15	Hong Kong
737.42	Rep. of Korea
737.65	Taiwan
737.80	Hong Kong
737.95	Mexico
740.11	Hong Kong
740.12	Hong Kong
740.13	Hong Kong
740.14	Hong Kong
740.38	Rep. of Korea
741.50	Hong Kong
745.45	Taiwan
745.68	Taiwan
748.55	Taiwan
750.20	Taiwan
750.40	Hong Kong
750.45	Rep. of Korea
	Taiwan
750.47	Taiwan
750.65	Rep. of Korea
	Taiwan
750.70	Taiwan
755.25	Hong Kong
770.40	Mexico
771.41	Taiwan
772.06	Taiwan
772.15pt.	Hong Kong 1/
772.20	Taiwan
772.51	Taiwan
772.60	Rep. of Korea
772.80	Taiwan
772.95	Taiwan
772.97	Taiwan
773.05	Taiwan
773.10	Taiwan
774.45	Hong Kong
774.50	Taiwan
774.55pt.	Hong Kong 2/
790.10	Taiwan
790.55	Taiwan
790.60	Taiwan
791.19	Argentina
791.27	Brazil
791.28	Brazil
791.60	Taiwan

1/ Excludes picture frames.
2/ Includes 774.5505, 774.5510, 774.5515, 774.5517, 774.5520, and 774.5525.

Annex B

Competitive Need Waivers

TSUS	Country
107.48	Uruguay
131.35	Thailand
137.88	Colombia
140.14	Thailand
146.44	Philippines
147.54	Colombia
155.20	Colombia Philippines
192.17	Colombia
206.60	Taiwan
207.00	Taiwan 1/
222.42	Philippines
222.44	Philippines
222.64	Philippines
240.38	Philippines
355.81	Colombia
386.13pt.	Taiwan 2/
389.61	Macau
455.18	Colombia
455.20	Colombia
490.24	Malaysia Philippines
534.87	Taiwan
534.94	Taiwan
622.25	Malaysia
652.70	Rep. of Korea
676.15	Singapore
676.30	Singapore
676.56	Malaysia Singapore
684.10	Singapore
684.15	Singapore
684.58	Hong Kong Singapore
685.14	Malaysia Singapore
685.25	Hong Kong
685.28	Singapore
685.32	Hong Kong Malaysia Singapore 3/
685.39	Singapore
685.40	Singapore
685.70	Malaysia Singapore 4/
685.90	Hong Kong Singapore
687.30	Malaysia
688.42	Singapore Thailand
709.27	Singapore
713.17	Rep. of Korea
724.45	Hong Kong
725.05	Rep. of Korea Taiwan
727.11	Philippines
727.13	Philippines
734.20	Hong Kong
734.54	Rep. of Korea Taiwan

1/ 207.0020-wood Christmas ornaments only.
2/ 386.1343pt.-wall banners only.
3/ Includes 685.3260 and 685.3262 only, for Singapore.
4/ Includes 685.7002, 685.7004, 685.7010, 685.7015, 685.7020, 685.7025, and 685.7080 for Singapore only.

TSUS	Country
737.07	Hong Kong
	Macau
737.15	Rep. of Korea 5/
	Taiwan 5/
737.21	Hong Kong
737.23	Rep. of Korea
	Taiwan
737.28	Rep. of Korea
	Taiwan
737.30	Hong Kong
	Taiwan
737.35	Rep. of Korea
	Hong Kong
737.40	Rep. of Korea
	Taiwan
737.47	Rep. of Korea
737.49	Hong Kong
	Taiwan
737.51	Rep. of Korea
737.60	Hong Kong
737.80	Macau
	Hong Kong 6/
	Macau 7/
737.95pt.	Rep. of Korea 7/
	Taiwan 7/
740.05	Thailand
740.38pt.	Hong Kong 8/
748.20	Taiwan
748.21	Taiwan
756.04	Philippines
772.15pt.	Hong Kong 9/
	Taiwan 9/
772.95	Hong Kong
774.55pt.	Hong Kong 10/
792.50	Philippines

5/ 737.1560 only, for Republic of Korea and Taiwan.
6/ 737.9525 only for Hong Kong.
7/ 737.9555 only for Macau, Republic of Korea and Taiwan.
8/ Watch bracelet sets valued at less than $12 per dozen.
9/ Plastic picture frames only.
10/ 774.5580 and 774.5585 only.

[FR Doc. 87-262
Filed 1-2-87; 3:27 pm]
Billing code 3195-01-C

Rules and Regulations

Federal Register
Vol. 52, No. 3
Tuesday, January 6, 1987

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

Technical Position Statement on Licensing of Alternative Methods of Disposal for Low-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: This technical position statement identifies and describes specific alternative methods of disposal currently being considered as alternatives to shallow land burial, provides general guidance on these methods of disposal, and recommends procedures that will improve and simplify the licensing process. The statement provides answers to certain questions that have arisen regarding the applicability of 10 CFR Part 61 to near-surface disposal of waste, using methods that incorporate engineered barriers or structures, and other alternatives to conventional shallow land burial disposal practices. This position also identifies a recently published NRC contractor report that addresses the applicability of 10 CFR Part 61 to a range of generic disposal concepts and which provides technical guidance that the staff intends to use for these concepts.

As a result of comments received on the published draft of this position (51 FR 7806, March 6, 1986) as well as input at workshops and State meetings, the NRC has decided to focus on alternative methods that utilize engineering material with earthen cover (for example, below-ground vaults and earth-mounded concrete bunkers). Consequently, NRC will expend minimal resources on above ground vaults and mined cavities. This position statement combined with the above mentioned NRC contractor report fulfills the requirements of section 8(a) of Pub. L. 99-240, the Low-Level Radioactive Waste Policy Amendments Act (LLRWPAA) of 1985.

ADDRESS: Copies of NUREG-1241 may be purchased by calling the U.S. Government Printing Office on (202) 275-2060 or 2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, ATTN: Ann Butler, P.O. Box 37082, Washington, DC 20013-7082.

FOR FURTHER INFORMATION CONTACT: Clayton L. Pittiglio, Jr., Low-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 427-4793.

Dated at Silver Spring, Maryland, this 4th day of December 1986.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Branch Chief, Low-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 87-77 Filed 1-5-87; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Modification of Size Standards To Make Existing Size Standards Compatible With New Standard Industrial Classification System (SIC)

AGENCY: Small Business Administration (SBA).

ACTION: Emergency Interim Final Rule.

SUMMARY: The SBA is modifying its size standards to conform with the newly revised SIC system which has been revised by the Office of Management and Budget (OMB), efffective January 1, 1987. This is necessary so that the SBA officials, Federal procurement personnel, and other users of size standards will have size standards which correspond to the new SIC system and thus be able to determine which firms are small businesses. The SBA's intent is to make its size standards compatible with the new SIC system, not to initiate any size standards changes.

At the same time, the SBA is inviting comments on the suitability of these emergency interim standards becoming final size standards, or whether further changes are desirable.

DATES: Effective January 1, 1987. Comments on interim standards becoming final should be submitted by March 9, 1987.

ADDRESSES: Address comments to: Harvey D. Bronstein, Economist, Size Standards Staff, Small Business Administration, 1441 L Street, NW., Room 601, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Alan Odendahl, Size Standards Staff, (202) 653-6373.

SUPPLEMENTARY INFORMATION: Effective January 1, 1987, the U.S. Office of Management and Budget, Executive Office of the President, will put into effect a revision of the Standard Industrial Classification System. (See the OMB's notice in the **Federal Register**, 51 FR 35170, October 1, 1986.) This extensively modifies the system which had been used since 1972. The SBA follows this system for size standards, and size standards are used for deciding which firms are eligible as small businesses for Federal procurements set aside for small business, the SBA's financing and other programs. The new SIC system will be used extensively by procurement officials to categorize contracts. Some new 4-digit industries have been created, and the coverages of others have undergone important changes. Therefore, the size standards need to be redesignated to correspond with the new SIC system.

This interim final rule is effective January 1, 1987. For Government contracting purposes, whether with respect to small business set-aside or section 8(a) procurements, the rule will apply to solicitations issued on or after January 1, 1987. For financial assistance other than disaster assistance (but including section 8(a) program eligibility matters) the rule will apply to applications dated on or after January 1, 1987. For disaster financial assistance, the rule will apply to disasters commencing on or after January 1, 1987.

The SBA is taking this action on an emergency interim final rule basis because of the necessity of having size

standards corresponding to the new SIC codes in place by the date of the SIC revision (January 1, 1987). In order to implement the new size standards by January 1, 1987, the SBA finds it impractical to follow the usual procedures under the Administrative Procedure Act, the Regulatory Flexibility Act and Executive Order 12291. As this rule is published on an interim basis, the SBA will consider changes in a subsequent final rule, and invites comments on the revised standards. Such comments should include information or data on the industry structure of new industries, or on components transferred from or remaining in old industries. Comments are not solicited on those industries for which no size standards previously existed, or on unrevised industries.

Normally, in establishing size standards, the SBA relies heavily on economic statistics describing the structure of each industry (see 13 CFR 121.1). Because statistical collection organizations, such as the Census Bureau, will not begin to issue statistics based on the new SIC system for some years, the SBA has devised the following method to determine equivalent size standards for the new 4-digit SICs. The method relies on three decision rules to convert from the old SIC codes to new equivalents. These are:

Decision Rule 1

A new or revised SIC code is formed from all, or one or more components, of one old SIC code. (This includes unchanged industries renumbered with a new code.) In these cases, use the same size standard associated with the old SIC code.

1987 SIC Manual—Industries to Which This Rule Was Applied (172):

0273, 0279, 1221, 1222, 1231, 1611, 2032, 2034, 2038, 2047, 2053, 2064, 2096, 2099, 2321, 2326, 2421, 2499, 2599, 2631, 2656, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2754, 2835, 2836, 2869, 3052, 3053, 3061, 3081, 3083, 3084, 3085, 3086, 3087, 3088, 3089, 3363, 3365, 3366, 3369, 3433, 3442, 3444, 3469, 3491, 3494, 3536, 3543, 3549, 3555, 3556, 3561, 3566, 3569, 3571, 3572, 3577, 3578, 3596, 3599, 3613, 3663, 3669, 3672, 3679, 3728, 3821, 3827, 3844, 3845, 4212, 4213, 4412, 4432, 4491, 4492, 4493, 4522, 4724, 4725, 4729, 4812, 4813, 4833, 4899, 5013, 5032, 5033, 5039, 5044, 5045, 5046, 5047, 5048, 5049, 5063, 5091, 5092, 5162, 5169, 5192, 5193, 5199, 5311, 5561, 5731, 5735, 5736, 5932, 5989, 5995, 6029, 7291, 7299, 7322, 7323, 7335, 7336, 7338, 7352, 7353, 7359, 7371, 7373, 7374, 7375, 7376, 7377, 7378, 7379, 7381, 7382, 7383, 7384, 7514, 7515, 7533, 7536, 7537, 7539, 7841, 7997, 8043, 8049, 8052, 8059, 8082, 8092, 8093, 8099, 8399, 8711, 8712, 8713, 8721, 8731, 8732, 8733, 8734, 8741, 8742, 8743, 8744, 8748.

Decision Rule 2

A new or revised SIC code is formed from components in whole or in part of two old SIC codes. In such cases, if the two components each have a common size standard, apply that size standard to the new SIC code.

If the components have different size standards, use the size standard of the most dominant component (as measured by sales or value of shipments), unless the dollar volume of Federal Government procurement is important. In such cases, the dominant component in procurement volume takes precedence.

1987 SIC Manual—Industries to which This Rule Was Applied (100):

0181, 0182, 0721, 0722, 0723, 0724, 1241, 1629, 1771, 2015, 2048, 2066, 2091, 2258, 2281, 2282, 2284, 2322, 2325, 2353, 2369, 2411, 2431, 2522, 2542, 2621, 2657, 2679, 2759, 2819, 3082, 3264, 3364, 3423, 3432, 3492, 3531, 3537, 3548, 3565, 3567, 3575, 3579, 3585, 3593, 3639, 3641, 3661, 3695, 3699, 3812, 3826, 3965, 3999, 4173, 4215, 4226, 4449, 4482, 4489, 4512, 4513, 4581, 4731, 4741, 4785, 4841, 4959, 5015, 5065, 5084, 5131, 5159, 5399, 5421, 5461, 5599, 5632, 5734, 5999, 6035, 6411, 6531, 7334, 7349, 7363, 7372, 7389, 7521, 7532, 7812, 7822, 7999, 8011, 8021, 8111, 8249, 8322, 8412, 8422.

Decision Rule 3

A new or revised SIC code is formed from three or more older SIC codes, or components of SIC codes. In this case, use the size standard of the most dominant components of the former industries as measured in sales, unless the dollar volume of Government procurement is a significant consideration. (As in Rule 2 above, the industry or industries representing the greater volume of procurement takes precedence over the sales comparison.) If each of the older industries has a common size standard, apply that common standard to the new SIC code.

1987 SIC Manual—Industries to which This Rule Was Applied (27):

0831, 1099, 1459, 1479, 1499, 2068, 2273, 2299, 2493, 2611, 2796, 3069, 3339, 3449, 3559, 3594, 3625, 3671, 3829, 4424, 4481, 4499, 6021, 6022, 6036, 7219, 7991.

The purpose of this interim final rule is to establish equivalent size standards for the new SIC system following the above decision rules. It is not the SBA's intent to initiate any size standards changes at this time; rather the goal is to convert from the former SIC system to the new one.

For size determination purposes, protests and appeals, the SBA and interested parties must rely on the 1987 SIC system and this emergency interim final rule. Following the public comment period provided for in this rule, additional changes may appear in the final rule. The Office of Management and Budget expects to have published the *1987 SIC Manual* by the spring of 1987. It may be ordered from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161; Accession No. PB 87-100012, @ $30.00.

These examples are based on that October 1, 1986, **Federal Register** notice in which the final decision relating to the SIC changes was published. The following table illustrates how the SIC changes affect the size standards:

Old SIC code and title	New SIC code and title	Size standard change
2321—Men's and Boys' Shirts and Nightwear ("Nightwear" component) (500-employee size standard).	2322—Men's and Boys' Underwear and Nightwear (500-employee size standard).	The new industry follows Rule 1 in which a new SIC code would be formed from a component of a single old code. The rule advises that we should retain the size standard of the old code of 500 employees.
2321—Men's and Boys' Shirts and Nightwear ("Shirts" component) (500-employee size standard). 2322—Men's and Boys' Underwear (all) (500-employee size standard).	2321—Men's and Boys' Shirts (500-employee size standard).	The new industry follows Rule 2 in which both components have a common size standard of 500 employees. This rule indicates that we should maintain the common size standard of 500 employees.
3829—Measuring and Controlling Devices (all) (500-employee size standard). 3662—Radio and Television Communication Equipment (part) (750-employee size standard).	3829—Measuring and Controlling Devices, N.E.C. (500-employee size standard).	This new industry follows Rule 3 in which we use the size standard of the dominant industry under the former SIC. In this case SIC-3829 with a size standard of 500 employees is used. (SIC-3662, 3811, and 3832 will no longer be used under the 1987 SIC system.)

Old SIC code and title	New SIC code and title	Size standard change
3811—Engineering and Scientific Instruments (part) (500-employee size standard). 3832—Optical Instruments and Lenses (part) (500-employee size standard).		

The SBA at this time cannot determine whether or not this rule constitutes a major rule for the purposes of Executive Order 12291. The SBA intends to publish the appropriate economic analysis as part of the final rule.

The SBA certifies, pursuant to section 608 of the Regulatory Flexibility Act, 5 U.S.C. 608, that this interim final rule is being published pursuant to an emergency for the reasons indicated above, and the SBA is, therefore, waiving the requirements of section 603 of the Regulatory Flexibility Act. The SBA will publish a final regulatory analysis when this rule is promulgated in final form. This rule imposes no new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 13 CFR Part 121

Small business, Small business size standards.

PART 121—[AMENDED]

Accordingly, Part 121 of 13 CFR is amended as follows:

1. The authority citation for Part 121 continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act 15 U.S.C. 632(a) and 634(b)(6).

2. Section 121.2 is amended by redesignating the current table "Final Rule Size Standards by SIC Industry," as Table 2, and by adding a new paragraph (d) and a new Table 1 entitled "List of Revised Size Standards" to read as follows:

§ 121.2 [Amended]

* * * * *

(d) The size standards by SIC industry appear in the two tables, Table 1 and Table 2. Table 1 shows only emergency interim final size standards for new industry codes in the *1987 SIC Manual* and those industries whose coverage or definition has changed. Table 2 contains all size standards existing under the 1972 SIC system, and accordingly includes all the unchanged industry codes. It remains in effect except for the industries listed in Table 1.

(1) *How to Locate the Relevant Size Standard:* To use the two tables, the following procedure should be used:

(i) Using the *1972 SIC Manual* and its 1977 Supplement, locate the industry and SIC code for the product or service under consideration.

(ii) Refer to Table 1 below, "List of Revised Size Standards." If the SIC from the 1972/77 *SIC Manual* appears in the first column, refer to the descriptive title in the third column for the most appropriate activity (1987 SIC industry), and use the size standard in the 4th column.

(iii) If the SIC does not appear in Table 1, refer to Table 2 to determine the size standard.

(iv) Even though some SIC codes appear in both tables, the listing in Table 1 (Revised Size Standards) takes precedence over the listing in Table 2.

(2) Table 1 does not include revisions of SIC's for which no size standard currently exists. In Table 1 an asterisk (*) indicates a new SIC in 1987 not used before in 1972 (or previously used for a totally different activity, now transferred elsewhere). In both Tables, numbers in the "Size Standard" column indicate number of employees; dollar figures indicate annual receipts in millions of dollars (unless otherwise specified).

Table 1.—List of Revised Size Standards

A. AGRICULTURE, FORESTRY, AND FISHING

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
0181	0181	Ornamental Nursery Products	$0.5
0182	0182	Food Crops Grown Under Cover	0.5
0189	0181	Ornamental Nursery Products	05
	0182	Food Crops Grown Under Cover	0.5
0279	*0273	Animal Aquaculture	0.1
	0279	Animal Specialties, N.E.C.	0.1
0721	0721	Crop Planting and Protection	3.5
0722	0722	Crop Harvesting	3.5
0723	0723	Crop Preparation Services for Market	3.5
0724	0724	Cotton Ginning	3.5
0729	0721	Crop Planting and Protection	3.5
	0722	Crop Harvesting	3.5
	0723	Crop Preparation Services for Market	3.5
	0724	Cotton Ginning	3.5
0821, 0843, and 0849.	*0831	Forest Products, Except Timber	3.5

B. MINING

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
1051, 1092, and 1099.	1099	Metal Ores, N.E.C.	500

B. MINING—Continued

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
1111	*1231	Anthracite Mining	500
1112, 1213	*1241	Coal Mining Services	$3.5
1211	*1222	Bituminous Coal Mining, Underground	500
	*1221	Bituminous and Lignite Coal Mining, Surface, and Bituminous Coal Preparation Plants	500
1452, 1453, 1454, and 1459.	1459	Clay and Related Minerals, N.E.C.	500
1472, 1473, 1476, 1477, and 1479.	1479	Chemical and Fertilizer Mining, N.E.C.	500
1492, 1496, and 1499.	1499	Nonmetallic Minerals, N.E.C.	

C. CONSTRUCTION

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
1611	1629	Heavy Construction, N.E.C., Except Dredging	$17.0
	1629	Dredging	$9.5
	1771	Concrete Work	$7.0
	1611	Highway and Street Construction	$17.0
1629	1629	Heavy Construction, N.E.C., Except Dredging	$17.0
	1629	Dredging	$9.5
1771	1771	Concrete Work	$7.0

D. MANUFACTURING

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
2016, 2017	*2015	Poultry Slaughtering, Dressing, and Processing	500
2032	2091	Canned and Cured Seafoods	500
	2032	Canned Specialties	1,000
2034	*2068	Salted and Roasted Nuts and Seeds	500
	2034	Dehydrated Fruits, Vegetables, Soups	500
2038	*2053	Frozen Bakery Products	500
	2038	Dehydrated Fruits, Vegetables, Soups	500
2047	2047	Dog and Cat Food	500
	2048	Prepared Feeds, N.E.C.	500
2048	2048	Prepared Feeds, N.E.C.	500
2065	*2068	Salted and Roasted Nuts	500
	*2064	Confectionery Products	500
2066	2066	Chocolate and Cocoa Products	500
2091	2091	Canned and Cured Seafoods	500
2099	2066	Chocolate and Cocoa Products	500
	*2098	Potato Chips and Similar Products	500
	*2068	Salted and Roasted Nuts and Seeds	500
	2099	Food Preparations, N.E.C.	500
2258	2258	Warp Knit Fabric Mills	500
2271, 2272, 2279	*2273	Carpets and Rugs	500
2281	2281	Yarn Mills	500
2282	2282	Throwing and Winding Mills	500
2283	2284	Thread Mills	500
	2281	Yarn Mills	500
	2282	Throwing and Winding Mills	500
2284	2284	Thread Mills	500
2291	2299	Textile Goods, N.E.C.	500
2292	2258	Warp Knit Fabric Mills	500
2293, 2294, 2299	2299	Textile Goods, N.E.C.	500
2321	2321	Men's and Boys' Shirts	500
	2322	Men's and Boys' Underwear and Nightwear	500
2322	2322	Men's and Boys' Underwear and Nightwear	500
2327	*2325	Men's and Boys' Separate Trousers and Casual Slacks	500
2328	*2325	Men's and Boys' Separate Trousers and Casual Slacks	500
	*2326	Men's and Boys' Work Clothing	500
2351, 2352	*2353	Hats, Caps, and Millinery	500
2363, 2369	2369	Children's Outwear, N.E.C.	500
2411	2411	Logging	500
2421	2411	Logging	500
	2421	Sawmills and Planing Mills	500
2431	2431	Millwork	500
2492	*2493	Reconstituted Wood Products	500
2499	*2493	Reconstituted Wood Products	500
	2499	Wood Products, N.E.C.	500
2522	2522	Office Furniture, Except Wood	500
2542	2542	Partitions and Fixtures, Except Wood	500
2599	2522	Office Furniture, Except Wood	500
	2542	Partition and Fixtures, Except Wood	500
	2599	Furniture and Fixtures, N.E.C.	500
2611	2611	Pulp Mills	750
2621	2611	Pulp Mills	750
	2621	Paper Mills	750
2631	2611	Pulp Mills	750
	2631	Paperboard Mills	750
2641	*2671	Paper Coating and Laminating for Packaging	500
	*2672	Paper Coating and Laminating, Except for Packaging	500
2642	*2677	Envelopes	500
2643	*2674	Bags: Uncoated Paper and Multiwall	500
	*2673	Bags: Plastics, Laminated and Coated	500
2645	*2675	Die-Cut Paper and Paper Board	500
2646	*2679	Converted Paper Products, N.E.C.	500

D. MANUFACTURING—Continued

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
2647	*2676	Sanitary Paper Products, N.E.C.	500
2648	*2678	Stationery Products	500
2649	*2679	Converted Paper Products, N.E.C.	500
2651	*2657	Folding Paperboard Boxes	750
2654	*2657	Folding Paperboard Boxes	750
	*2656	Sanitary Food Containers	750
2661	*2493	Reconstituted Wood Products	500
	2621	Paper Mills	750
2751	*2759	Commercial Printing, N.E.C.	500
2753	*2796	Platemaking	500
	*2759	Commercial Printing, N.E.C.	500
2754	*2796	Platemaking	500
	2754	Commercial Printing, Gravure	500
2793, 2794, 2797	*2796	Platemaking	500
2819	2819	Industrial Inorganic Chemicals, N.E.C	1,000
2831	*2835	Diagnostic Substance	500
	*2836	Biological Products, Except Diagnostic Substances	500
2869	2819	Industrial Inorganic Chemicals, N.E.C.	1,000
	2869	Industrial Organic Products, N.E.C.	1,000
3031	3069	Fabricated Rubber Products, N.E.C.	500
3041	3052	Rubber and Plastics Hose and Belting	500
3069	*3061	Molded, Extruded, and Lathe-Cut Rubber Mechanical Goods	500
	3069	Fabricated Rubber Products, N.E.C.	500
3079	*3081	Unsupported Sheet and Film	500
	*3082	Unsupported Profile Shapes	500
	*3083	Laminated Plate and Sheet	500
	*3084	Pipe	500
	*3085	Bottles	500
	*3086	Plastics Foam Products	500
	*3087	Custom Compounding of Purchased Resins	500
	*3088	Plumbing Fixtures	500
	3432	Plumbing Fixture Fittings	500
	*3089	Plastics Products, N.E.C.	500
3264	3264	Porcelain Electrical and Electronic Supplies	500
3293	*3053	Gaskets, Packing, and Sealing Devices	500
3332, 3333, and 3339.	3339,	Primary Nonferrous Metals, N.E.C.	500
3361	*3363	Aluminum Die Castings	500
	*3365	Aluminum Foundries	500
3362	*3364	Nonferrous Die Castings, Except Aluminum	500
	*3366	Copper Foundries	500
3369	*3364	Nonferrous Die Castings, Except Aluminum	500
	3369	Nonferrous Foundries, Except Aluminum and Copper	500
3423	3423	Hand and Edge Tools, N.E.C.	500
3432	3432	Plumbing Fixture Fittings	500
3433	3567	Industrial Furnaces and Ovens	500
	3433	Heating Equipment, Except Electric	500
3442	2431	Millwork	500
	3442	Metal Doors, Sash, and Trim	500
3444	3449	Miscellaneous Metal Work	500
	3444	Sheet Metal Work	500
3449	3449	Miscellaneous Metal Work	500
3469	3449	Miscellaneous Metal Work	500
	3469	Metal Stampings, N.E.C.	500
3494	*3492	Fluid Power Valves and Hose Fittings	500
	*3491	Industrial Valves	500
	3494	Valves and Pipe Fittings, N.E.C.	500
3531	3531	Construction Machinery	750
3536	3531	Construction Machinery	750
	3537	Industrial Trucks and Tractors	750
	3536	Hoists, Cranes, and Monorails	500
3537	3537	Industrial Trucks and Tractors	750
3549	*3548	Welding Apparatus	500
	3559	Special Industry Machinery, N.E.C.	500
	3549	Metalworking Machinery, N.E.C.	500
3551	*3565	Packaging Machinery	500
	*3556	Food Products Machinery	500
3555	3069	Fabricated Rubber Products, N.E.C.	500
	3423	Hand and Edge Tools, N.E.C.	500
	3555	Printing Trades Machinery	500
3559	3559	Special Industry Machinery, N.E.C.	500
3561	*3594	Fluid Power Pumps and Motors	500
	3561	Pumps and Pumping Equipment, Except Fluid Power Pumps	500
3565	*3543	Industrial Patterns	500
3566	*3594	Fluid Power Pumps and Motors	500
	3566	Speed Changers, Drives, and Gears	500
3567	3567	Industrial Furnaces and Ovens	500
3569	*3594	Fluid Power Pumps and Motors	500
	*3565	Packaging Machinery	500
	3569	General Industrial Machinery, N.E.C.	500
3572	3579	Office Machines, N.E.C.	500
3573	*3571	Computers	1,000
	*3572	Computer Storage Devices	1,000
	*3575	Computer Terminals	1,000
	*3695	Recording Media	1,000
	*3577	Computer Peripheral Equipment, N.E.C.	1,000
3574	*3578	Calculating and Accounting Machines	1,000
3576	*3596	Scales and Balances, Except Laboratory	500
3579	3579	Office Machines, N.E.C.	500
3585	3585	Refrigeration and Heating Equipment	750
3599	*3593	Fluid Power Cylinders and Actuators	500
	3599	Machinery, Except Electrical, N.E.C.	500

D. MANUFACTURING—Continued

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
3613	*3625	Relays and Industrial Controls	750
	3613	Switchgear and Switchboard Apparatus	750
3622	*3625	Relays and Industrial Controls	750
3623	*3548	Welding Apparatus	500
3636	3639	Household Appliances, N.E.C.	500
	3559	Special Industry Machinery, N.E.C.	500
3639	3639	Household Appliances, N.E.C.	500
3641	3641	Electric Lamps	1,000
3661	*3575	Computer Terminals	1,000
	3661	Telephone and Telegraph Apparatus	1,000
3662	3661	Telephone and Telegraph Apparatus	1,000
	*3663	Radio and TV Communications Systems and Equipment, and Broadcast and Studio Equipment	750
	*3812	Search, Detection, Navigation, and Guidance Systems and Instruments	750
	*3669	Other Communications Equipment, N.E.C.	750
	3829	Measuring and Controlling Devices, N.E.C.	500
	3699	Electrical Equipment and Supplies, N.E.C.	750
3671, 3672, 3673	3671	Electron Tubes	750
3679	3264	Porcelain Electrical and Electronic Supplies	500
	*3625	Relays and Industrial Controls	750
	3671	Electron Tubes	750
	*3672	Printed Circuit Boards	500
	*3695	Recording Media	1,000
	3679	Electronic Components, N.E.C.	500
3693	*3845	Electromedical and Electrotherapeutic Apparatus	500
	*3844	X-Ray Apparatus and Tubes	500
3699	3641	Electric Lamps	1,000
	3585	Refrigeration and Heating Equipment	750
	3699	Electrical Equipment and Supplies, N.E.C.	750
3728	*3492	Fluid Power Valves and Hose Fittings	500
	*3594	Fluid Power Pumps and Motors	500
	*3593	Fluid Power Cylinders and Actuators	500
	3728	Aircraft Equipment, N.E.C.	1,000
3811	*3812	Search, Detection, Navigation, and Guidance Systems and Instruments	750
	*3821	Laboratory Apparatus and Furniture	500
	3829	Measuring and Controlling Devices, N.E.C.	500
	*3826	Analytical Instruments	500
3829	3829	Measuring and Controlling Devices, N.E.C.	500
3832	*3826	Analytical Instruments	500
	3829	Measuring and Controlling Devices, N.E.C.	500
	*3827	Optical Instruments	500
3962	3999	Manufacturing Industries, N.E.C.	500
3963, 3964	*3965	Needles, Pins, Buttons, and Clothing Fasteners	500
3999	3999	Manufacturing Industries, N.E.C.	500

E. TRANSPORTATION AND PUBLIC UTILITIES

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
4171, 4172	*4173	Bus Terminal and Service Facilities	$3.5
4212	*4215	Courier Services, Except by Air	$12.5
	4212	Local Trucking, Without Storage	$12.5
4213	*4215	Courier Services, Except by Air	$12.5
	4213	Trucking, Except Local	$12.5
4224, 4226	4226	Special Warehousing and Storage, N.E.C.	$12.5
4411	*4412	Deep Sea Foreign Transportation of Freight	500
	*4481	Deep Sea Transportation of Passengers, Except by Ferry	500
4421	*4424	Deep Sea Domestic Transportation of Freight	500
	*4481	Deep Sea Transportation of Passengers, Except by Ferry	500
4422	*4424	Deep Sea Domestic Transportation of Freight	500
	*4481	Deep Sea Transportation of Passengers, Except by Ferry	500
4423	*4424	Deep Sea Domestic Transportation of Freight	500
	*4481	Deep Sea Transportation of Passengers, Except by Ferry	500
4431	*4432	Freight Transportation on the Great Lakes and Saint Lawrence Seaway	500
	*4481	Deep Sea Transportation of Passengers, Except by Ferry	500
	*4482	Ferries	500
4441	*4449	Water Transportation of Freight, N.E.C.	500
	*4489	Water Transportation of Passenger, N.E.C.	500
4452	*4482	Ferries	500
4453	*4499	Water Transportation Services, N.E.C.	$3.5
4454	*4492	Towing Tugboat Services	$3.5
4459	*4449	Water Transportation of Freight, N.E.C.	500
	*4489	Water Transportation of Passenger, N.E.C.	500
4463	*4491	Marine Cargo Handling	$12.5
4464	*4499	Water Transportation Services, N.E.C.	$3.5
4469	*4493	Marinas	$3.5
	4959	Sanitary Services, N.E.C.	$3.5
	*4499	Water Transportation Services, N.E.C.	$3.5
4511	*4513	Air Courier Services	1,500
	*4512	Air Transportation, Scheduled	1,500
4521	*4512	Air Transportation, Scheduled	1,500
	*4513	Air Courier Services	1,500
	*4522	Air Transportation, Nonscheduled	1,500
4582, 4583	*4581	Services Related To Air Transportation	$3.5
4712, 4723	*4731	Freight Forwarding and Arrangement	$12.5
4722	*4724	Travel Agencies	[1] $0.5
	*4725	Tour Operators	[1] $0.5
	*4729	Arrangement of Passenger Transportation N.E.C.	[1] 0.5
4742, 4743	*4741	Railroad Car Rental	$3.5
4782, 4784	*4785	Inspection Services, Fixed Facilities, N.E.C.	$3.5
4811	*4812	Radio Telephone Communication Services	1,500

E. TRANSPORTATION AND PUBLIC UTILITIES—Continued

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
	*4813	Telephone Communications, Except Radio Telephone	1,500
4833	*4841	Cable and Other Pay TV	$7.5
	*4833	Television Stations	$7.0
4899	*4841	Cable and Other Pay TV	$7.5
	4899	Communication Services, N.E.C.	$7.5
4959	4959	Sanitary Services, N.E.C.	$3.5

[1] As measured by commissions.

F. WHOLESALE TRADE

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
5013	5013	Motor Vehicle Parts and Supplies, New	100
	5015	Motor Vehicle Parts, Used	100
5039	*5032	Brick, Stone, and Related Products	100
	*5033	Roofing, Siding, and Insulation	100
	5039	Construction Materials, N.E.C.	100
5041	*5091	Sporting and Recreational Goods	100
5042	*5092	Toys and Hobby Goods and Supplies	100
5063	5065	Electronic Parts and Equipment	100
	5084	Industrial Machinery	100
	5063	Electrical Apparatus and Equipment	100
5065	5065	Electronic Parts and Equipment	100
5081	*5045	Computers and Computer Peripheral Equipment and Software	100
	*5044	Office Equipment	100
	*5046	Commercial Equipment, N.E.C.	100
5084	5084	Industrial Machinery and Equipment	100
	*5047	Medical and Hospital Equipment	100
5086	*5048	Ophthalmic Goods	100
	*5049	Professional Equipment, N.E.C.	100
5133, 5134	*5131	Prices Goods and Notions	100
	5159	Farm-Product Raw Materials, N.E.C.	100
5152, 5159	5161, *5162	Plastics Materials and Basic Shapes	100
	*5169	Chemicals and Allied Products, N.E.C.	100
5199	*5192	Books Periodicals, and Newspapers	100
	*5193	Flowers and Florists' Supplies	100
	5199	Nondurable Goods, N.E.C.	100

G. RETAIL TRADE

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
5311	5399	Misc. General Merchandise Stores	$3.5
	5311	Department Stores	$3.5
5399	5399	Misc. General Merchandise Stores	$3.5
5422, 5423	*5421	Meat and Fish (Seafood) Markets	$3.5
5462, 5463	*5461	Retail Bakeries	$3.5
5561	5599	Automotive Dealers, N.E.C.	$3.5
	5561	Recreational Vehicle Dealers	$3.5
5599	5599	Automotive Dealers, N.E.C.	$3.5
5631, 5681	*5632	Women's Accessory and Specialty Stores	$3.5
5732	*5734	Computer and Software Stores	$4.5
	*5731	Radio, Television, and Electronics Stores	$4.5
5733	*5735	Record and Prerecorded Tape Stores	$3.5
	*5736	Musical Instrument Stores	$3.5
5931	*5015	Motor Vehicle Parts, Used	100
	*5932	Used Merchandise Stores	$3.5
5982	5999	Miscellaneous Retail Stores, N.E.C.	$3.5
	*5989	Fuel Dealers, N.E.C.	$3.5
5999	*5995	Opticians Stores	$3.5
	5999	Miscellaneous Retail Stores, N.E.C.	$3.5

H. FINANCE, INSURANCE, AND REAL ESTATE

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
6022	*6036	Savings Institutions, Not Federally Chartered	$100 million.[2]
	6022	State Commercial Banks	$100 million.[2]
6023	*6036	Savings Institutions, Not Federally Chartered	$100 million.[2]
	6022	State Commercial Banks	$100 million.[2]
6024	*6036	Savings Institutions, Not Federally Chartered	$100 million.[2]
	6022	State Commercial Banks	$100 million.[2]
6025, 6026, and 6027.	*6021	National Banks	$100 million.[2]
6028	*6029	Commercial Banks, N.E.C.	$100 million.[2]
6032	*6036	Savings Institutions, Not Federally Chartered	$100 million.[2]
Federal Savings Banks, FDIC and FSLIC.	*6035	Savings Institutions, Not Federally Chartered	$100 million.[2]
6033	*6036	Savings Institutions, Not Federally Chartered	$100 million.[2]
6034	*6036	Savings Institutions, Not Federally Chartered	$100 million.[2]
6122	*6035	Savings Institutions, Federally Chartered	$100 million.[2]
6123	*6036	Savings Institutions, Not Federally Chartered	$100 million.[2]
6124	*6036	Savings Institutions, Not Federally Chartered	$100 million.[2]
6125	*6036	Savings Institutions, Not Federally Chartered	$100 million.[2]

H. Finance, Insurance, and Real Estate—Continued

1972 SIC	1987 SIC	1987 Descriptive title	Size standard
6411	6411	Insurance Agents, Brokers, and Service	$3.5.
6531	6531	Real Estate Agents and Managers	$1.0.[3]
6611	6411	Insurance Agents, Brokers and Service	$3.5.
	6531	Real Estate Agents and Managers	$1.0.[3]
	8111	Legal Services	$3.5.

[2] As measured by assets.
[3] Commission only.

I. Services

7214	7219	Laundry and Garment Services, N.E.C.	$3.5
7219	7219	Laundry and Garment Services, N.E.C.	$3.5
7299	* 7291	Tax Return Preparation Services	$3.5
	* 7352	Medical Equipment Rental	$3.5
	* 7991	Physical Fitness Facilities	$3.5
	7219	Laundry and Garment Services, N.E.C.	$3.5
	7299	Miscellaneous Personal Services	$3.5
7321	* 7322	Adjustment and Collection Services	$3.5
	* 7323	Credit Reporting	$3.5
7332	* 7334	Photocopying and Duplicating Services	$3.5
7333	* 7335	Commercial Photography	$3.5
	* 7336	Commercial Art and Graphic Design	$3.5
7339	* 7338	Stenographic and Court Reporting Services	$3.5
	* 7334	Photocopying and Duplicating Services	$3.5
7341, 7349	7349	Building Maintenance Services, N.E.C.	$8.0
7351	* 7383	News Syndicates	$3.5
7362	* 7363	Help Supply Services	$13.5
7369	* 8744	Facilities Support Management Services	$3.5
	* 7363	Help Supply Services	$13.5
7372	* 7371	Custom Computer Programming Services	$7.0
	7372	Prepackaged Computer Software	$7.0
	* 7373	Computer Integrated System Design	$7.0
7374	* 7375	Electronic Information Retrieval Services	$7.0
	* 7376	Computer Facilities Management Services	$7.0
	7374	Computer Processing and Data Preparation Services	$7.0
7379	* 7377	Computer Rental and Leasing	$12.5
	* 7378	Computer Maintenance and Repair	$12.5
	7379	Computer Related Services, N.E.C.	$12.5
7391	* 8731	Commercial Physical and Biological Research	$500
7392	* 8741	Management Services	$3.5
	* 8742	Management Consulting Services	$3.5
	* 8743	Public Relations Services	$3.5
	* 8732	Commercial Economic, Sociological, and Educational Research	$3.5
	* 8748	Business Consulting Services, N.E.C.	$3.5
7393	* 7381	Detective, Guard, and Armored Car Services	$6.0
	* 7382	Security Systems Services	$6.0
7394	* 7353	Heavy Construction and Earthmoving Equipment Rental and Leasing	$3.5
	* 7841	Video Tape Rental	$3.5
	* 7359	Equipment Rental and Leasing, N.E.C.	$3.5
7395	* 7384	Photofinishing Laboratories	$3.5
7396	* 7389	Business Services, N.E.C.	$3.5
7397	* 8734	Testing Laboratories	$3.5
7399	* 7389	Business Services, N.E.C.	$3.5
7512	* 7514	Passenger Car Rental, Without Drivers	$12.5
	* 7515	Passenger Car Leasing, Without Drivers	$12.5
7523, 7525	* 7521	Automobile Parking	$3.5
7531, 7535	* 7532	Top, Body, and Upholstery Repair and Paint Shops	$3.5
7539	* 7533	Motor Vehicle Exhaust Systems Repair Shops	$3.5
	* 7536	Motor Vehicle Glass Replacement Shops	$3.5
	* 7537	Motor Vehicle Transmission Repair Shops	$3.5
	7539	Automotive Repair Shops, N.E.C.	$3.5
7813, 7814	* 7812	Motion Picture Production	$14.5
7823, 7824	* 7822	Motion Picture and Tape Distribution	$14.5
7932	7999	Amusement and Recreation Svs, N.E.C.	$3.5
7997	* 7991	Physical Fitness Facilities	$3.5
	7997	Membership Sports and Recreation Clubs	$3.5
7999	* 8412	Museums and Art Galleries	$3.5
	* 8422	Botanical and Zoological Gardens	$3.5
	* 7991	Physical Fitness Facilities	$3.5
	7999	Amusement and Recreation Services, N.E.C.	$3.5
8011	8011	Offices and Clinics of Doctors of Medicine	$3.5
8021	8021	Offices and Clinics of Dentists	$3.5
8049	* 8043	Offices of Podiatrists	$3.5
	8049	Offices of Health Practitioners, N.E.C.	$3.5
8059	* 8052	Intermediate Health Care Facilities	$3.5
	8059	Nursing and Personal Care Facilities, N.E.C.	$3.5
8081	8011	Offices and Clinics of Doctors of Medicine	$3.5
	8021	Offices and Clinics of Dentists	$3.5
	* 8092	Kidney Dialysis Centers	$3.5
	* 8093	Specialty Outpatient Clinics, N.E.C.	$3.5
8091	* 8082	Home Health Care Agencies	$3.5
	* 8099	Health and Allied Services, N.E.C.	$3.5
8111	8111	Legal Services	$3.5
8241, 8249	8249	Vocational Schools, N.E.C.	$3.5
8321	* 8322	Individual and Family Social Services	$3.5
8399	* 8322	Individual and Family Social Services	$3.5
	8399	Social Services, N.E.C.	$3.5
8411	* 8412	Museums and Art Galleries	$3.5

I. SERVICES—Continued

8421	* 8422	Botanical and Zoological Gardens	$3.5
8911	* 8711	Engineering Services: Military and Aerospace Equipment and Military Weapons	$13.5
		Marine Engineering and Naval Architecture	$9.0
		Other Engineering Services	$2.5
	* 8712	Architectural Services (Other Than Naval)	$2.5
	* 8713	Surveying Services	$2.5
8922	* 8733	Noncommercial Research Organizations	$3.5
8931	* 8721	Accounting, Auditing, and Bookkeeping Services	$4.0

Dated: December 23, 1986.

Charles L. Heatherly,

Acting Administrator, U.S. Small Business Administration.

[FR Doc. 87-125 Filed 1-5-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 61228-6228]

Clarification of Validated License Requirement for Certain Analytical Instruments Controlled Under 1565A

AGENCY: Office of Technology and Policy Analysis, Export Administration, International Trade Administration, Commerce.

ACTION: Notice of Interpretation.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies commodities subject to Department of Commerce export controls. During the course of completing Foreign Availability Assessments on Fourier Transform Infra-Red Spectrometers (FTIR) and Fourier Transform Nuclear Magnetic Resonance Spectrometers (FTNMR), the Office of Foreign Availability determined that some exporters were applying for validated licenses for these analytical instruments, even though they had been released from control under Export Control Commodity Number (ECCN) 1565A (49 FR 50608, Dec. 31, 1984). This notice is being provided to clarify the controls on these analytical instruments imposed by ECCN 1565A.

FOR FURTHER INFORMATION CONTACT: Rajendra Dheer, Computer Systems Technology Center, Office of Technology and Policy Analysis, Department of Commerce, Washington, DC 20230 (Telephone: (202) 377-0706).

SUPPLEMENTARY INFORMATION: ECCN 1565A releases from control "embedded" and "incorporated" "digital computers" or "related equipment" that meet the requirements specified in paragraphs (h)(2)(i) and (h)(2)(ii) under the "List of Electronic Computers and Related Equipment Controlled by ECCN 1565A" on the Commodity Control List (15 CFR 399.1, Supplement No. 1). However, if the "digital computer" or "related equipment" is designed or modified for "signal processing," the decontrol provisions of paragraphs (h)(2)(i) and (h)(2)(ii) do not apply—i.e., if the "signal processing" function in a FTIR or FTNMR is implemented in *hardware*, the FTIR or FTNMR is not released from control under these paragraphs. However, if the "signal processing" function is implemented only through software, the FTIR or FTNMR is released from control, provided the other requirements of paragraphs (h)(2)(i) and (h)(2)(ii) are met.

"Signal processing" software is controlled in Supplement No. 3 to 15 CFR Part 379. However, paragraph (a)(3)(ii) under the "List of Software Subject to Supplement No. 3 to Part 279" releases from control the minimum "signal processing" software necessary to perform the function for which a decontrolled piece of equipment was designed, if the software is in machine executable form (object code) and supplied with the equipment. This software may be expected under General License GTDR to all destinations, except those in Country Groups S and Z.

Therefore, FTIRs and FTNMRs that perform "signal processing" are classified under ECCN 6599G on the Commodity Control List (15 CFR 399.1, Supplement No. 1) when they contain "embedded" or "incorporated" "digital computers" or "related equipment" that meet the requirements of paragraph (h)(2)(i) or (h)(2)(ii) of ECCN 1565A and the "signal processing" function is implemented in software, *not* hardware. The minimum software necessary to make this equipment perform the function for which it was designed may be exported with the equipment under General License GTDR to all destinations, except those in Country Groups S and Z.

Dated: December 31, 1986.

Daniel E. Cook,

Acting Director, Office of Technology and Policy Analysis.

[FR Doc. 87-150 Filed 1-5-87; 8:45 am]

BILLING CODE 3510-DT-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1034

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Consumer Product Safety Commission; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule, correction.

SUMMARY: This document corrects a part number in final regulations on enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the Consumer Product Safety Commission which were published February 5, 1986 (52 FR 4566).

FOR FURTHER INFORMATION CONTACT: Robert T. Noonan, Office of General Counsel, Consumer Product Safety Commission, Washington, DC 20207; Telephone (301) 492-6980.

The following correction is made in 16 CFR Part 1034 appearing on 4566 in the issue of February 5, 1986:

On page 4566 column one "CONSUMER PRODUCT SAFETY COMMISSION 16 CFR PART 1034."

Dated: December 31, 1986.

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety Commission.

[FR Doc. 87-175 Filed 1-5-87; 8:45 am]

BILLING CODE 6355-01-M

16 CFR Part 1750

Standard for Devices To Permit the Opening of Household Refrigerator Doors From the Inside; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule: correction.

SUMMARY: This document corrects section number citations in an amendment to Standard for Devices to Permit the Opening of Household Refrigerator Doors from the Inside which was published January 2, 1986 (51 FR 10).

FOR FURTHER INFORMATION CONTACT: Stephen Lemberg, Office of General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; Telephone (301) 492–6980.

The following corrections are made in the amendment to the Standard for Devices to Permit the Opening of Household Refrigerator Doors from the Inside in the issue of January 2, 1986:

1. On page 10, column two, Supplementary Information, first paragraph, both references to "§ 1750.6" are corrected to read "§ 1750.7(b)."

2. On page 10, column three, first full paragraph § 1750.6 is corrected to read "§ 1750.7(b)."

3. On page 10, column three, last paragraph, "§ 1750.6" is corrected to read "§ 1750.7(b)."

Dated: December 31, 1986.

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety Commission.

[FR Doc. 87–174 Filed 1–5–87; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 82F–0255]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of di-*n*-alkyl(C_8–C_{10})dimethylammonium chloride, *n*-alkyl(C_{12}–C_{18})benzyldimethylammonium chloride, ethyl alcohol, and *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) formed from 9 to 12 moles of ethylene oxide, as components of a sanitizing solution to be used on food-contact surfaces. This action responds to a petition filed by Lonza, Inc.

DATES: Effective January 6, 1987; objections by February 5, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 3, 1982 (47 FR 38988), FDA announced that a petition (FAP 2B3638) had been filed by Lonza, Inc., Fair Lawn, NJ 07410, proposing that the food additive regulations be amended to provide for the safe use of di-*n*-alkyl(C_8–C_{10})dimethylammonium chloride, *n*-alkyl(C_{12}–C_{18})benzyldimethylammonium chloride, and *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) formed from 9 to 12 moles of ethylene oxide, as components of a sanitizing solution to be used on food-contact surfaces.

FDA reviewed the safety of the individual food additives that are components of the sanitizing solution (including ethyl alcohol, which, for the reasons explained below, was not listed in the original notice of filing), as well as the safety of the starting materials used to manufacture these food additives. Although di-*n*-alkyl(C_8–C_{10})dimethylammonium chloride, *n*-alkyl(C_{12}–C_{18})benzyldimethylammonium chloride, ethyl alcohol, and the ethoxylated emulsifier *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) formed from 9 to 12 moles of ethylene oxide have not been shown to cause cancer, the ethoxylated emulsifier may contain minute amounts of ethylene oxide and 1,4-dioxane as byproducts of its production. These chemicals have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as ethylene oxide and 1,4-dioxane, are commonly found as contaminants in chemical products, including most food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." (H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958).) This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent.

Since that decision, FDA has approved the use of other color additives and food additives on the same basis. FDA fully explained the scientific, legal, and policy underpinnings for these decisions in the advance notice of proposed rulemaking on a policy for regulating carcinogenic chemicals in food and color additives, published in the **Federal Register** of April 2, 1982 (47 FR 14464).

The agency now believes that the Delaney or anticancer clause is not applicable unless the food additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer, but that contains a carcinogenic constituent, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's

decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use of Additive

Sanitizing solutions are mixtures of additives in which each additive has a functional effect. The subject sanitizing solution contains two quaternary ammonium salts, (di-*n*-alkyl(C_8–C_{10})dimethylammonium chloride and *n*-alkyl(C_{12}–C_{18})benzyldimethylammonium chloride), which are the active sanitizing agents; ethyl alcohol, which functions as a dispersant for the quaternary ammonium salts in water; and an ethoxylated compound, (*alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) formed from 9 to 12 moles of ethylene oxide), which functions as an emulsifier and aids in the penetration of bacterial cells by the active ingredients.

A. Quaternary Ammonium Compounds

The two quaternary active ingredients in the subject sanitizing solution, (di-*n*-alkyl(C_8–C_{10})dimethylammonium chloride and n-alkyl(C_{12}–C_{18})benzyldimethylammonium chloride), are used in currently regulated sanitizing solutions. These sanitizing solutions are listed in 21 CFR 178.1010(b) (16), (17), (18), (22), and (23). On the basis of the data submitted in support of these currently regulated uses and of the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of these quaternary ammonium compounds in the subject sanitizing solution is safe and effective.

B. Ethyl Alcohol

Ethyl alcohol is also used in several currently regulated sanitizing solutions. These solutions are listed in 21 CFR 178.1010(b) (9), (17), and (22). In addition, FDA has affirmed that ethyl alcohol is GRAS for use as an antimicrobial agent in pizza crust (21 CFR 184.1293).

Ethyl alcohol was not listed as an ingredient of this sanitizing solution formulation in the September 3, 1982, filing notice (47 FR 38988), because the petitioner did not list this substance in its food additive petition. The petitioner felt that the use of ethyl alcohol in sanitizing solutions was generally recognized as safe (GRAS), and that the use of GRAS substances in such solutions was authorized under 21 CFR 178.1010(b). However, after review of the petition by FDA, the petitioner recognized that FDA has generally included GRAS ingredients in the food additive regulations for sanitizing solutions when the agency has considered the use of these ingredients to be essential in the formulation. The petitioner then revealed the use of ethyl alcohol in the sanitizing solution to FDA.

Based upon its review of the petition and data submitted in support of the other listed uses of this additive, FDA concludes that the use of ethyl alcohol in this sanitizing solution is safe, and that it is an essential ingredient in this sanitizing solution. Ethyl alcohol is needed to assist in the dispersion of the quaternary ammonium salts in water. Therefore, in accord with its general policy of listing substances that are essential components of sanitizing solutions, even if they are GRAS, the agency is including ethyl alcohol in this regulation.

C. Ethoxylated Emulsifier

FDA estimates that the petitioned use of *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) formed from 9 to 12 moles of ethylene oxide will result in extremely low levels of exposure to this additive. The agency has calculated an estimated intake of this additive based on considerations such as migration of the additive under the most severe intended conditions of use and the probable concentration of the additive in the daily diet from food-contact articles that contain this ethoxylated emulsifier as a result of the use of the sanitizing solution. The estimated daily intake for this additive is 90 micrograms per person per day (0.3 part per million in the diet).

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in low exposure levels (Refs. 1 and 2) and has not required such testing here. Because *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) formed from 9 to 12 moles of ethylene oxide has not been shown to cause cancer, the anticancer clause does not apply to it.

The available data also revealed no adverse effect from *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) formed from 9 to 12 moles of ethylene oxide. However, this additive may contain 1,4-dioxane and ethylene oxide, substances that have been shown to cause cancer in test animals. Impurities such as 1,4-dioxane and ethylene oxide may be present as a result of manufacturing procedures used to produce this emulsifier.

FDA has evaluated the safety of this ethoxylated emulsifier under the general safety clause, using risk assessment procedures to estimate the upper bound risk presented by the 1,4-dioxane and ethylene oxide that may be present as impurities in this additive. Based on this evaluation, FDA has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018, 13019; April 2, 1984). This risk evaluation of the carcinogenic impurities ethylene oxide and 1,4-dioxane has two aspects: (1) assessment of the worst case exposure to the impurities from the proposed use of the additive and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

1. 1,4-Dioxane

Based on the fraction of the daily diet that may be in contact with surfaces containing *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) formed from 9 to 12 moles of ethylene oxide as well as the level of 1,4-dioxane that may be present in the additive (Ref. 5), FDA estimated the hypothetical worst case exposure to 1,4-dioxane from the use of the additive to be 1 nanogram per person per day. The agency used data in a carcinogenesis bioassay on 1,4-dioxane conducted for the National Cancer Institute (Ref. 4) to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of the ethoxylated emulsifier in the sanitizing solution. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidences of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The committee further concluded that an estimate of the upper bound limit of lifetime human cancer risk from potential exposure to 1,4-dioxane stemming from the proposed use of the ethoxylated emulsifier could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from

the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the ethoxylated emulsifier. Based on a worst case exposure of 1 nanogram per person per day, FDA estimates that the upper bound limit of individual lifetime risk from potential exposure to 1,4-dioxane from the use of the ethoxylated emulsifier is 4×10^{-11} or less than 4 in 100 billion. Because of the numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and therefore the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 1,4-dioxane that results from the use of the ethoxylated emulsifier.

2. Ethylene Oxide

Based on the fraction of the daily diet that may be in contact with surfaces containing *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) formed from 9 to 12 moles of ethylene oxide as well as levels of ethylene oxide which may be present in the additive (Ref. 5), FDA estimated the hypothetical worst case exposure to ethylene oxide from the use of this ethoxylated emulsifier to be 1 nanogram per person per day. The agency used data in a carcinogenesis bioassay on ethylene oxide conducted for the Institute of Hygiene, University of Mainz, West Germany (Ref. 3), to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of the ethoxylated emulsifier. The results of the bioassay on ethylene oxide demonstrated that this material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidences of squamous cell carcinoma of the forestomach and carcinoma in situ of the glandular stomach.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that this information on ethylene oxide supported the finding of carcinogenicity. The committee further concluded that an estimate of the upper bound limit of lifetime human cancer risk from potential exposure to ethylene oxide could be made from the bioassay.

Based on a worst case exposure of 1 nanogram per person per day, FDA estimates, using a linear proportional model, that the upper bound limit of individual lifetime risk from potential exposure to ethylene oxide from the use of *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) formed from 9 to 12 moles of ethylene oxide is 2×10^{-9} or less than 2 in 1 billion. Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that results from the use of *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) formed from 9 to 12 moles of ethylene oxide.

D. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of the ethylene oxide and 1,4-dioxane impurities in the ethoxylated emulsifier. The agency finds that a specification is not necessary for the following reasons: (1) Because of the levels at which ethylene oxide and 1,4-dioxane are used in the production of this additive, the agency would not expect these impurities to become components of food at other than extremely small levels; and (2) the upper bound limit of lifetime risk from exposure, even under worst case assumptions, is very low, less than 2 in 1 billion.

E. Conclusion on Safety

FDA, having evaluated the available toxicity data and the exposure calculation for the components of the sanitizing solution, has determined that they are safe for their proposed use.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be reviewed in that office between 9 a.m. and 4 p.m., Monday through Friday:

1. Carr, G.M., "Carcinogenicity Testing Programs" *in* "Food Safety: Where Are We?" Committee on Agriculture, Nutrition, and Forestry, United States Senate, July 1979, p. 59.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology," *in* "Chemical Safety Regulation and Compliance," Edited by F. Homburger and J.K. Marquis, S. Karger Publishers, New York, 1985.

3. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI-CG-TR-80, 1978.

5. Memorandum dated February 13, 1986, from Food Additive Chemistry Evaluation Branch to Indirect Additives Branch, "Exposure to Ethylene Oxide (EO) and 1,4-Dioxane (DX)."

Any person who will be adversely affected by this regulation may at any time on or before February 5, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in

support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348): 21 CFR 5.10 and 5.61.

2. Section 178.1010 is amended by adding new paragraphs (b)(32) and (c)(27) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(32) An aqueous solution containing (i) di-*n*-alkyl(C_8–C_{10})dimethylammonium chloride compounds having average molecular weights of 332 to 361, (ii) *n*-alkyl(C_{12}–C_{18})benzyldimethylammonium chloride compounds having average molecular weights of 351 to 380 and consisting principally of alkyl groups with 12 to 16 carbon atoms with no more than 1 percent of groups with 8 and 10, (iii) ethyl alcohol, and (iv) *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of *p*-nonylphenol with 9 to 12 moles of ethylene oxide. The ratio of compound (i) to compound (ii) is 3 to 2.

(c) * * *

(27) Solutions identified in paragraph (b)(32) of this section shall provide, when ready to use, at least 150 parts per million and no more than 400 parts per million of active quarternary compounds in solutions containing no more than 600 parts per million water hardness. The adjuvants used with the quarternary compounds will not exceed the amounts required to accomplish the intended technical effect.

* * * * *

Dated: December 24, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–115 Filed 1–5–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8121]

Income Tax; Taxable Years Beginning After December 31, 1953; Election To Expense Certain Depreciable Business Assets

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the election to expense certain depreciable business assets. Changes in the applicable tax law were made by the Economic Recovery Tax Act of 1981, the Subchapter S Revision Act of 1982, and the Tax Reform Act of 1984 (Division A of the Deficit Reduction Act of 1984). The regulations provide the public with the guidance needed when making an election to expense certain depreciable business assets.

DATES: The regulations are effective for property placed in service after December 31, 1980, except amendments made to §§ 1.179–1(f)(2), 1.179–1(h), 1.179–2(a), and 1.179–2(d) by the Subchapter S Revision Act of 1982 which are effective for taxable years beginning after December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Maurice B. Foley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (202) 566–3287 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On September 26, 1985, the **Federal Register** (50 FR 39018) published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 179, 263, 1033, and 1245 of the Internal Revenue Code of 1954 (Code). The amendments were proposed to conform the regulations to sections 202(a) and 209 of the Economic Recovery Tax Act of 1981 (Pub. L. 97–34, 95 Stat. 219, 226), section 3(f) of the Subchapter S Revision Act of 1982 (Pub. L. 97–354, 96 Stat. 1689), section 102(aa) of the Technical Corrections Act of 1982 (Pub. L. 97–448, 96 Stat. 2369), and section 13 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 505). After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

In General

Section 179, as amended by the Economic Recovery Tax Act of 1981, allows taxpayers (other than trusts, estates, and certain noncorporate lessors) to elect to expense the cost (or a portion of the cost) of certain depreciable business assets, which they would otherwise be required to capitalize. A section 179 expense election may be made for the taxable year in which the section 179 property is placed in service. The terms "section 179 property" and "placed in service" are defined in sections 1.179–3 (a) and (f), respectively.

Clarifying Changes Made in Response to Comments

Section 1.179–1(e)(1) of the proposed regulations provided that a taxpayer must recapture any benefit derived from expensing section 179 property if such property is not used predominantly in a trade or business at any time before the close of the second taxable year following the taxable year in which the property is placed in service. The benefit derived from expensing the property is equal to the excess of the amount expensed over the total amount that would have been allowable under section 168. However, the proposed regulations did not clearly state a rule regarding the amount to be recaptured by a partner or S corporation shareholder if the section 179(b) dollar limitation prevented such partner or shareholder from deducting all (or a portion of the amount) of a section 179 expense. This Treasury decision provides that in such cases the "amount expensed" shall not include any amount that was not allowed as a deduction to a taxpayer because the taxpayer's aggregate amount of allowable section 179 expenses exceeded the section 179(b) dollar limitation.

Section 1.179–1(f)(2) of the proposed regulations provided that the basis of a partnership's or S corporation's section 179 property must be reduced to reflect the amount of section 179 expense elected by the partner. However, these regulations did not state whether the partnership's basis in the property must be reduced when the section 179 (b) dollar limitation prevents the partner or shareholder from deducting its allocable

share of the section 179 expense. This Treasury decision provides that such reduction must be made even if a partner or S corporation shareholder is not allowed to deduct all (or a portion of the amount) of the section 179 expense allocated to him.

Section 1.179–1(f)(2) of the proposed regulations also provided that a partnership is not required to reduce its basis in section 179 property by the amount of the section 179 expense allocated to a trust or estate. However, these regulations did not clearly state what happened to that portion of the basis of partnership property which is attributable to such trust or estate's allocable amount of section 179 expense. In response, this Treasury decision provides that the partnership may claim a section 168 deduction or a section 38 credit with respect to any unadjusted basis resulting from the trust or estate's inability to claim its allocable portion of the partnership's section 179 expense.

Paperwork Reduction Act

The collection of information requirements contained in these final regulations have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. The requirements have been approved by OMB (control number 1545–0172).

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that these regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Maurice B. Foley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matter of substance and style.

List of Subjects

26 CFR 1.61–1— 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.1001–1— 1.1102–3

Income taxes, Gain and loss, Basis, Nontaxable exchanges.

26 CFR 1.1201— 1.1252–2

Income taxes, Capital gains and losses, Recapture.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 28 U.S.C. 7805. * * * Section 1.179–1 also issued under 26 U.S.C. 179(d). Section 1.179–4 also issued under 26 U.S.C. 179(c). * * *

Par. 2. Sections 1.179–1 through 1.179–4 are revised to read as set forth below.

§ 1.179–1 Election to expense certain depreciable assets.

(a) *In general.* Section 179 allows a taxpayers to elect to expense the cost (as defined in § 1.179–3(e)), or portion of the cost, of section 179 property (as defined in § 1.179–3(a)) for the taxable year in which the property is placed in service (as defined in §1.179–3(f)). The election is not available for trusts, estates, and certain noncorporate lessors. See paragraph (i)(2) of this section relating to noncorporate lessors.

(b) *Amount subject to expense.* The expense deduction under section 179 is allowed for the entire cost or a portion of the cost of one item of section 179 property, or the entire cost or a portion of the cost of several items of section 179 property, subject to the dollar limitation of section 179(b) and § 1.179–2. The properties and apportionment of cost to be subject to the election shall be selected by the taxpayer.

(c) *Proration not required.* The expense deduction under section 179 is determined without any proration based on the period of time the section 179 property has been in service during the taxable year. For example, a taxpayer, a corporation which files its income tax returns on the calendar year basis, purchases and places in service on December 1, 1983, section 179 property costing $10,000. The corporation may elect to claim a section 179 expense deduction for the taxable year ending December 31, 1983, for the cost of the property (up to the $5,000 limitation imposed under section 179(b)(1)) without proration for the number of days in 1983 during which the property was in service.

(d) *Partial business use.* If a taxpayer uses section 179 property for both trade or business and non-trade or business purposes, the portion of the cost of the property attributable to the trade or business use is eligible for expensing under section 179, provided that more than 50 percent of the property's use in the taxable year the property is placed in service is for trade or business purposes. The dollar limitation of section 179(b) is then applied to the portion of the cost attributable to the trade or business use. For example, a taxpayer in 1983 purchases section 179 property costing $10,000 for which 80 percent of its use will be in the taxpayer's trade or business. The cost of the property, adjusted to reflect the business use of the property, is $8,000 (80 percent × $10,000). Thus, the taxpayer could elect to expense up to $5,000 of the cost of the property (see section 179(b)). However, for property placed in service after June 18, 1984, in taxable years ending after such date, see section 280F(d)(1) relating to the coordination of section 179 with the limitation on the amount of depreciation and investment tax credit for luxury automobiles and where certain property is used for personal purposes. Furthermore, see paragraphs (e) (1) through (3) of this section relating to recapture where the property is no longer predominantly used in the taxpayer's trade or business.

(e) *Change in use; recapture*—(1) *In general.* If a taxpayer's section 179 property is not used predominantly in a trade or business of the taxpayer at any time before the close of the second taxable year following the taxable year in which the property is placed in service by the taxpayer (recapture period), the taxpayer must recapture in the taxable year in which the section 179 property is not used predominantly in a trade or business any benefit derived from expensing such property. The benefit derived from expensing the property is equal to the excess of the amount expensed under this section over the total amount that would have been allowable for prior taxable years and the taxable year of recapture as a deduction under section 168 (had section 179 not been elected) for the portion of the cost of the property to which the expensing relates (regardless of whether such excess reduced the taxpayer's tax liability). For purposes of the preceding sentence (i) the "amount expensed under this section" shall not include any

amount that was not allowed as a deduction to a taxpayer because the taxpayer's aggregate amount of allowable section 179 expenses exceeded the section 179(b) dollar limitation, and (ii) in the case of an individual who does not elect to itemize deductions under section 63(g) in the taxable year of recapture, the amount allowable as a deduction under section 168 in the taxable year of recapture shall be determined by treating property used in the production of income other than rents or royalties as being property used for personal purposes. The amount to be recaptured shall be treated as ordinary income for the taxable year in which the property is no longer used predominantly in a trade or business of the taxpayer. For taxable years following the year of recapture, the taxpayer's deductions under section 1688(a) shall be determined as if no section 179 election with respect to the property had been made. However, for property placed in service after June 18, 1984, in taxable years ending after such date, see section 280F(d)(1) relating to the coordination of section 179 with the limitation on the amount of depreciation and investment tax credit for luxury automobiles and where certain property is used for personal purposes. If the recapture rules of both section 280F(b)(3) and this paragraph (e)(1) apply to an item of section 179 property, the amount of recapture shall be determined only under the rules of section 280F(b)(3) with respect to such property.

(2) *Predominant use.* Property will be treated as not used predominantly in a trade or business of the taxpayer if 50 percent or more of the use of such property during any taxable year within the recapture period is for a use other than in a trade or business of the taxpayer. If during any taxable year of the recapture period the taxpayer disposes of the property (other than in a disposition to which section 1245(a) applies) or ceases to use the property in a trade or business in a manner that had the taxpayer claimed a credit under section 38 for such property such disposition or cessation in use would cause recapture under section 47, the property will be treated as not used in a trade or business of the taxpayer. However, for purposes of applying the recapture rules of section 47 pursuant to the preceding sentence, converting the use of the property from use in trade or business to use in the production of income will be treated as a conversion to personal use.

(3) *Basis; application with section 1245.* The basis of property with respect to which there is recapture under paragraph (e)(1) of this section shall be increased immediately before the event resulting in such recapture by the amount recaptured. If section 1245(a) applies to a disposition of property, there is no recapture under paragraph (e)(1) of this section.

(4) *Examples.* Paragraphs (e) (1) through (3) of this section are illustrated by the following examples:

Example (1). A, an individual who is a calendar year taxpayer, purchases and places in service on January 1, 1983, section 179 property, which is also 3-year recovery property under section 168, costing $10,000. A elects to expense $5,000 of the cost (see section 179(b)(1)) and makes no election under section 168(b)(3). On January 1, 1984, A converts the property from use in A's business to use for the production of income, and A uses the property in the latter capacity for the entire year. A elects to itemize deductions for 1984. Since the property was not predominantly used in a trade or business of A in 1984, which was the first taxable year following the taxable year the property was placed in service, A must recapture any benefit derived from expensing the property under section 179. Had A not elected to expense the $5,000 in 1983, A would have been entitled to deduct, under section 168 (a) and (b), 25 percent of the $5,000 in 1983, and 38 percent of the $5,000 in 1984. Therefore, A must include in ordinary income for the 1984 taxable year, the excess of $5,000 (the section 179 expense amount) over $3,150 (63 percent of $5,000), or $1,850. For purposes of computing the deduction under section 168 in 1985, the unadjusted basis of the property would be increased by $5,000.

Example (2). Assume the facts are the same as in example (1), except that during 1984 A uses the property 40 percent for trade or business purposes and 60 percent for personal use. Had A not elected to expense the $5,000 in 1963, A would have been entitled to deduct, under section 168(a), 25 percent of the $5,000 in 1983 and 15.2 percent (40 percent of 38 percent) of the $5,000 in 1984. See section 168(d)(1) and the regulations thereunder. Therefore, A must include in ordinary income for the 1984 taxable year the excess of $5,000 over $2,010 (40.2 percent of $5,000), or $2,990. If A uses the property solely in A's trade or business during 1985, A may deduct 37 percent of $5,000 in 1985 under section 168 (a). This deduction is in addition to the 37 percent section 168 deduction allowable on the portion of the original cost basis not expensed under section 179 (*i.e.*, $5,000.

(f) *Basis*—(1) *In general.* A taxpayer who elects to expense under section 179 must reduce the unadjusted basis of the section 179 property by the amount of the section 179 expense deduction. See section 168(d)(1) and the regulations thereunder.

(2) *Special rules for partnerships and S corporations.* Generally, the basis of a partnership or S corporation's section 179 property must be reduced to reflect the amount of section 179 expense elected by the partnership or S corporation. This reduction must be made even if the section 179 (b) dollar limitation prevents a partner in a partnership or shareholder in an S corporation from deducting all or a portion of the amount of the section 179 expense allocated by the partnership or S corporation.

(3) *Special rules with respect to trusts and estates which are partners or S corporation shareholders.* Since the section 179 election is not available for trusts or estates, a partner or S corporation shareholder that is a trust or estate may not deduct its allocable share of the section 179 expense elected by the partnership or S corporation. The partnership or S corporation's basis in section 179 property shall not be reduced to reflect any portion of the section 179 expense that is allocable to the trust or estate. Accordingly, the partnership or S corporation may claim a section 168 deduction or section 38 credit with respect to any unadjusted basis resulting from the trust or estate's inability to claim its allocable portion of the section 179 expense.

(g) *Disallowance of the section 38 credit.* If a taxpayer elects to expense under section 179, no section 38 credit is allowable for the portion of the cost expensed. In addition, no section 38 credit shall be allowed under section 48(d) to a lessee of property for the portion of the cost of the property that the lessor expensed under section 179.

(h) *Partnerships and S corporations.* In the case of property purchased and placed in service by a partnership or S corporation, the determination of whether the property is section 179 property is to be made at the partnership or S corporation level, and the election to expense the cost of section 179 property is made by the partnership or S corporation. See sections 703(b), 1363(c), 6221, 6231(a)(3), 6241, and 6245. This paragraph (h) is illustrated by the following example:

Example. A is an individual taxpayer who owns certain residential property as an investment. A, and others, form ABC partnership whose function is to rent and manage such property. A and ABC partnership file their income tax returns on a calendar year basis. In 1984, ABC partnership purchases and places in service section 179 property. Assuming ABC partnership satisfies the section 179 election requirements and chooses to make an election for the property purchased, A will be entitled, subject to the limitation contained in section 179(b), to deduct A's share of the expense allocated to A by the partnership. Although such property was only for the production of income with respect to A, the property was being used in

ABC's trade or business. Therefore, since the determination of whether property is section 179 property is made at the partnership level, the property was properly expensed.

(i) *Leasing of section 179 property*—(1) *In general.* A lessor of section 179 property who is treated as the owner of the property for Federal tax purposes will be entitled to the section 179 expense deduction if the requirements of section 179 and the regulations thereunder are met. These requirements will not be met if the lessor merely holds the property for the production of income. For certain leases entered into prior to January 1, 1984, the safe harbor provisions of section 168(f)(8) apply in determining whether an agreement is treated as a lease for Federal tax purposes.

(2) *Noncorporate lessor.* In determining the class of taxpayers (other than an estate or trust) for which section 179 is applicable, section 179(d)(5) provides that if a taxpayer is a noncorporate lessor (as described in Section 46(e)(3)) the taxpayer shall not be entitled to claim a section 179 expense for property purchased by the taxpayer unless a credit under section 38 is allowable to the taxpayer for such property (determined without regard to section 179). Thus, for example, if a taxpayer, a noncorporate lessor, purchases section 179 property and leases it and the taxpayer would be entitled to a section 38 credit for the property, by having satisfied all the requirements of subparagraph (A) or (B) of section 46(e)(3) and the regulations thereunder, the taxpayer is not precluded by section 179(d)(5) from electing to claim a section 179 expense for such property.

(j) *Cross references.* See section 453(i) and the regulations thereunder with respect to installment sales of section 179 property. See section 263(a)(i)(H) and the regulations thereunder with respect to capitalizing section 179 property. See section 1033(g)(3) and the regulations thereunder relating to condemnation of outdoor advertising displays. See section 1245(a) and the regulations thereunder with respect to recapture rules for section 179 property.

§ 1.179–2 Dollar limitation.

(a) *Maximum amount subject to election.* Section 179(b) limits the aggregate cost of section 179 property that a taxpayer may elect to expense under section 179 for any one taxable year. For a taxable year beginning in 1982, 1983, 1984, 1985, 1986, or 1987, the dollar limitation on the amount that can be expensed is $5,000; for a taxable year beginning in 1988 or 1989, $7,500; and for a taxable year beginning after 1989, $10,000. The dollar limitation of section 179(b) applies to each taxpayer and not to each trade or business in which the taxpayer has an interest. However, for property placed in service after June 18, 1984, in taxable years ending after such date, see sections 280F (a) and (d)(1) relating to the coordination of section 179 with the limitation on the amount of investment tax credit and depreciation for luxury automobiles. See paragraphs (b) through (f) of this section for special rules on applying the dollar limitation of section 179(b) with respect to controlled groups of corporations, partnerships, S corporations, and married individuals.

(b) *Component members of a controlled group*—(1) *In general.* Component members of a controlled group (as defined in paragraph (g) of § 1.179–3) on a December 31 shall be treated as one taxpayer in applying the dollar limitation of section 179(b) and paragraph (a) of this section. The expense deduction under section 179 may be taken by any one such member or allocated (for the taxable year of each such member which includes such December 31) among the several members in any manner, pursuant to an allocation by the common parent corporation if a consolidated return is filed for all component member of the group, or in accordance with an agreement entered into by the members of the group if separate returns are filed. If a consolidated return is filed by some component members of the group and separate returns are filed by other component members, then the common parent of the group filing the consolidated return shall enter into an agreement with those members who do not join in filing the consolidated return allocating the amount between the group filing the consolidated return and the other component members of the controlled group who do not join in filing the consolidated return. The amount of the expense allocated to any component member, however, shall not exceed the cost of the section 197 property actually purchased by the member and placed in service by the member in the taxable year. If component members have different taxable years, the term "taxable year" in section 179(b)(1) shall mean the taxable year of the member whose taxable year begins on the earliest date.

(2) *Statement to be filed.* If a consolidated return is filed, the common parent corporation shall file a separate statement attached to the income tax return in which an election is made to claim an expense deduction under section 179. See § 1.179–4. If separate returns are filed by some or all component members of the group, each component member not included in a consolidated return to which is allocated any part of the deduction under section 179 shall file a separate statement attached to the income tax return in which an election is made to claim an expense deduction. Such statement shall include the name, address, employer identification number, and the taxable year of each component member of the controlled group, a copy of the allocation agreement signed by persons duly authorized to act on behalf of the component members, and a description of the manner in which the deduction under section 179 has been divided among them.

(3) *Revocation.* If a consolidated return is filed for all component members of the group, an allocation among such members of the expense deduction under section 179 shall not be revoked after the due date of the return (including extensions of time) of the common parent corporation for the taxable year for which an election to take an expense deduction is made. If some or all of the component members of the controlled group file separate returns for taxable years including a particular December 31 for which an election to take the expense deduction is made, the allocation as to all members of the group shall not be revoked after the due date of the return (including extensions of time) of the component member of the controlled group whose taxable year which includes such December 31 ends on the latest date.

(c) *Partnership*—(1) *In general.* The dollar limitation of section 179(b) and paragraph (a) of this section applies to the partnership as well as to each partner. Thus, neither a partnership nor a partner may deduct as a section 179 expense more than the amount provided for in section 179(b) and paragraph (a) of this section in any taxable year. In the case of a partner who is a member of two or more partnerships that elect section 179, the partner's aggregate share of the partnership section 179 expense may not exceed the dollar limitation of section 179(b). In the case of a member of a partnership that elects under section 179 who also has separately acquired section 179 property, the aggregate amount of the member's partnership and non-partnership section 179 expense may not exceed the dollar limitation of section 179(b).

(2) *Partners share of section 179 expense.* Section 704 and the regulations thereunder shall govern the determination of a partner's share of a partnership's section 179 expense for

any taxable year. However, no allocation among partners of the section 179 expense shall be modified afer the due date of the partnership return (without regard to extensions of time) for the year for which the election under section 179 is made.

(3) *Taxable year.* If the taxable years of a partner and the partnership do not coincide, then for purposes of section 179, the amount of a partnership's section 179 expense attributable to a partner is determined in accordance with the provisions of section 706 and the regulations thereunder. For example, partnership AB has a taxable year ending January 31. Taxpayer A, a member of the AB partnership, has a taxable year ending November 30. On March 10, 1984, the AB partnership purchases and places in service section 179 property. Under the provisions of section 706(a) and § 1.706–1(a)(1), taxpayer A will be unable to claim any section 179 expense until A's taxable year ending November 30, 1985.

(d) *S Corporations.* For taxable years beginning after December 31, 1982, rules similar to those contained in paragraphs (c) (1) through (3) of this section shall apply in the case of S corporations (as defined in section 1361(a)) and their shareholders. Each shareholder's share of the section 179 expense of an S corporation shall be determined under section 1366.

(e) *Joint returns*—(1) *In general.* A husband and wife who file a joint income tax return under section 6013(a) shall be treated as one taxapayer in applying the dollar limitation of section 179(b)(1) and paragraph (a) of this section, regardless of which spouse purchased the property.

(2) *Joint returns filed after separate returns.* In the case of a husband and wife who elect under section 6013(b) to file a joint income tax return for a taxable year after the time prescribed by law for filing the return for such taxable year has expired, the dollar limitation under section 179 shall be the full dollar amount permitted by section 179(b)(1) provided the amount of one or both of the spouses' section 179 expense elections on their separate returns was limited as a result of the dollar limitation of section 179(b)(2) and paragraph (f) of this section. However, where neither of the spouses' section 179 expense elections on their separate returns was limited by the section 179(b)(2) dollar limitation, then the maximum dollar amount permitted on the joint return is the aggregate dollar amount the spouses elected on their separate returns. For example, H and W, who are calendar year taxpayers, purchase and place in service in 1983 section 179 property costing $10,000. H and W file separate income tax returns for the 1983 taxable year. He elects to claim $2,000 as an expense and W elects to expense $2,000. After the due date of the return H and W elect under section 6013(b) to file a joint income tax return for 1983. H and W may only elect to expense $4,000 on their joint income tax return.

(f) *Married individuals filing separately.* In the case of an individual who is married but files a separate tax return, the maximum amount of section 179 property which the taxpayer may elect to expense is 50 percent of the amount otherwise determined under section 179(b)(1) and paragraph (a) of this section. For this purpose, marital status shall be determined under section 143 and the regulations thereunder. For example, H and W are calendar year taxpayers. In 1983, H and W purchased and placed in service section 179 property costing $10,000. For the 1983 taxable year, H and W are living apart within the meaning of section 143(b) and therefore are not considered married. H and W are each entitled to claim a section 179 expense of up to $5000.

§ 1.179–3 Definitions.

The following definitions apply for purposes of section 179 and §§ 1.179–1 through 1.179–5:

(a) *Section 179 property:* The term "section 179 property" means any recovery property which is section 38 property and which is acquired by purchase for use in the taxpayer's trade or business. For this purpose, the term "trade or business" has the same meaning as in section 162 and the regulations thereunder. For definitions of the terms "recovery property," "section 38 property," and "purchase," see paragraphs (b), (c), and (d) of this section.

(b) *Recovery property.* The term "recovery property" shall have the same meaning assigned to it in section 168(c)(1)(A) and the regulations thereunder.

(c) *Section 38 property.* The term "section 38 property" shall have the same meaning assigned to it in section 48(a) and the regulations thereunder.

(d) *Purchase.* (1)(i) Except as otherwise provided in paragraph (d)(2) of this section, the term "purchase" means any acquisition of the property, but only if all the requirements of paragraphs (c)(1) (ii), (iii), and (iv) of this section are satisfied.

(ii) Property is not acquired by purchase if it is acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b). The property is considered not acquired by purchase only to the extent that losses would be disallowed under section 267 or 707(b). Thus, for example, if property is purchased by a husband and wife jointly from the husband's father, the property will be treated as not acquired by purchase only to the extent of the husband's interest in the property. However, in applying the rules of section 267 (b) and (c) for this purpose, section 267(c)(4) shall be treated as providing that the family of an individual will include only his spouse, ancestors, and lineal descendants. For example, a purchase of property from a corporation by a taxpayer who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of such corporation does not qualify as a purchase under section 179(d)(2); nor does the purchase of property by a husband from his wife. However, the purchase of section 179 property by a taxpayer from his brother or sister does qualify as a purchase for purposes of section 179(d)(2).

(iii) The property is not acquired by purchase if acquired from a component member of a controlled group of corporations (as defined in paragraph (g) of this section) by another component member of the same group.

(iv) The property is not acquired by purchase if the basis of the property in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or is determined under section 1014(a), relating to property acquired from a decedent. For example, property acquired by gift or bequest does not qualify as property acquired by purchase for purposes of section 179(d)(2); nor does property received in a corporate distribution the basis of which is determined under section 301(d)(2)(B), property acquired by a corporation in a transaction to which section 351 applies, property acquired by a partnership through contribution (section 723), or property received in a partnership distribution which has a carryover basis under section 732(a)(1).

(2) Property deemed to have been acquired by a new target corporation as a result of a section 338 election (relating to certain stock purchases treated as asset acquisitions) will be considered acquired by purchase.

(e) *Cost.* The cost of section 179 property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the taxpayer. For example, X Corporation

purchases a new drill press costing $10,000 in November 1984 which qualifies as section 179 property, and is granted a trade-in allowance of $2,000 on its old drill press. The old drill press had a basis of $1,200. Under the provisions of sections 1012 and 1031(d), the basis of the new drill press is $9,200 ($1,200 basis of oil drill press plus cash expended of $8,000). However, only $8,000 of the basis of the new drill press qualifies as cost for purposes of the section 179 expense deduction; the remaining $1,200 is not part of the cost because it is determined by reference to the basis of the old drill press.

(f) *Placed in service.* The term "placed in service" means the time that property is first placed by the taxpayer in a condition or state of readiness and availability for a specifically assigned function, whether for use in a trade or business, for the production of income, in a tax-exempt activity, or in a personal activity. See § 1.46-3(d)(2) for examples regarding when property shall be considered in a condition or state of readiness and availability for a specifically assigned function.

(g) *Controlled group of corporations and component member of controlled group.* The terms "controlled group of corporations" and "component member" of a controlled group of corporations shall have the same meaning assigned to those terms in section 1563 (a) and (b), except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1563(a)(1).

§ 1.179-4 Time and manner of making election.

(a) *Election.* A separate election must be made for each taxable year in which a section 179 expense deduction is claimed with respect to section 179 property. The election under section 179 and § 1.179-1 to claim a section 179 expense deduction for section 179 property shall be made on the taxpayer's first income tax return for the taxable year to which the election applies (whether or not the return is timely) or on an amended return filed within the time prescribed by law (including extensions) for filing the return for such taxable year. The election shall be made by showing as a separate item on the taxpayer's income tax return the following items:

(1) The total section 179 expense deduction claimed with respect to all section 179 property selected, and

(2) The portion of that deduction allocable to each specific item.

The person shall maintain records which permit specific identification of each piece of section 179 property and reflect how and from whom such property was acquired and when such property was placed in service. The election to claim a section 179 expense deduction under this section, with respect to any property, is irrevocable and will be binding on the taxpayer with respect to such property for the taxable year for which the election is made and for all subsequent taxable years, unless the Commissioner consents to the revocation of the election. Similarly, the selection of section 179 property by the taxpayer to be subject to the expense deduction and apportionment scheme must be adhered to in computing the taxpayer's taxable income for the taxable year for which the election is made and for all subsequent taxable years, unless consent to change is given by the Commissioner.

(b) *Revocation.* Any election made under section 179, and any specification contained in such election, may not be revoked except with the consent of the Commissioner. Such consent will be granted only in extraordinary circumstances. Requests for consent must be filed with the Commissioner of Internal Revenue, Washington, D.C., 20224. The request must include the name, address, and taxpayer identification number of the taxpayer and must be signed by the taxpayer or his duly authorized representative. It must be accompanied by a statement showing the year and property involved, and must set forth in detail the reasons for the request.

Par. 3. A new § 1.179-5 is added immediately following § 1.179-4 to read as set forth below.

§ 1.179.5 Effective date.

In general, the provisions of §§ 1.179-1 through 1.179-4 apply to property placed in service after December 31, 1980, in taxable years ending after such date. However, § 1.179-2(d), relating to the application of the dollar limitation rules with respect to S corporations, shall be effective for taxable years beginning after December 31, 1982.

Par. 4. Section 1.263(a)-1 is amended by redesignating paragraphs (c) (4) and (5) as (c) (5) and (6) respectively, and adding a new paragraph (c)(4) before redesignated paragraph (c)(5) to read as set forth below.

§ 1.263(a)-1 Capital expenditures; in general.

* * * * *

(c) * * *

(4) Section 179 and §§ 1.179-1 through 1.179-5, relating to election to expense certain depreciable business assets,

* * * * *

Par 5. Section 1.263(a)-3 is amended by redesignating paragraphs (b) (5), (6), (7), (8), (9), and (10) as (b), (6), (7), (8), (9), (10) and (11) respectively, and adding a new paragraph (b)(5) before redesignated paragraph (b)(6) to read as set forth below.

§ 1.263(a)-3 Election to deduct or capitalize certain expenditures.

* * * * *

(b) * * *

(5) Section 179 (election to expense certain depreciable business assets).

* * * * *

Par. 6. Section 1.1033(g)-1 is amended by revising the fourth sentence of paragraph (b)(1) to read as set forth below.

§ 1.1033(g)-1 Condemnation of real property held for productive use in trade or business or for investment.

* * * * *

(b) *Election to treat outdoor advertising displays as real property—* (1) * * * No election may be made with respect to any property for which (i) the investment credit under section 38 has been claimed, or (ii) an election to expense certain depreciable business assets under section 179(a) is in effect. * * *

* * * * *

§ 1.1245-2 [Amended]

Par. 7. The second sentence of paragraph (a)(3) of § 1.1245-2 is amended by removing "additional first-year depreciation allowance for small business" and adding in its place "expense allowance (additional first-year depreciation allowance for property placed in service before January 1, 1981)".

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved:

J. Roger Mantz,

Assistant Secretary of the Treasury.

December 16, 1986.

[FR Doc. 87-142 Filed 1-5-87; 8:45 am]

BILLING CODE 4830-01-N

Office of Revenue Sharing

31 CFR Part 51

Revenue Sharing Regulations

AGENCY: Office of Revenue Sharing, Treasury.

ACTION: Interim rule.

SUMMARY: The interim rule authorizes the establishment of a National Reserve fund to make adjustments to prior Revenue Sharing payments.

DATES: Effective January 6, 1987. Written comments will be considered if received on or before February 5, 1987.

ADDRESS: Send comments to: Chief Counsel for Revenue Sharing; Office of Revenue Sharing, Treasury Department, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Richard S. Isen, Chief Counsel, Office of Chief Counsel for Revenue Sharing, Washington, DC 20226, Telephone: (202) 634–5182.

SUPPLEMENTARY INFORMATION:

Background

The Revenue Sharing Program was terminated by section 14001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272). A number of regulation changes have already been made to implement section 14001 of COBRA and to provide for the scheduled closure of the Office of Revenue Sharing and the Revenue Sharing Program. One additional change should be made concerning the Revenue Sharing State Adjustment Reserves. The Director has set aside in the State and Local Fiscal Assistance Trust Fund 0.5 percent of the total allocation for all units of local government within each State for any entitlement period. These amounts are held in State Adjustment Reserves. The Reserves are to be used to ensure that there are sufficient funds available to make adjustments due after final allocations are made and for other temporary uses. Section 51.26(a) describes the State Adjustment Reserves and their purpose.

In view of the termination of the Revenue Sharing Program and the repeal of the Revenue Sharing Act by section 14001(a)(1) of COBRA, it is not necessary to continue the State Adjustment Reserves. Section 51.26(a) is amended by the addition of a new paragraph (3) to provide for distribution of the State Adjustment Reserves and establishment of the National Adjustment Reserve.

The regulations (31 CFR Part 51) currently cite the Revenue Sharing Act, 31 U.S.C. 6701 through 6724 as authority for their issuance. Thus, it is necessary to revise the authority section of the regulations which cites the Revenue Sharing Act as the basis for the regulation's issuance and insert in its stead section 14001 of the COBRA. By sections 14001(a) (2), (3), (5), and (6) of the COBRA, Congress mandated that the substantive requirements of the repealed Revenue Sharing Act shall continue during the wind-down period for the agency. The authority section of the regulation shall be revised so that references to the Revenue Sharing Act in the regulation shall continue in effect during the wind-down of the Program.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires that regulations with significant economic impact on a substantial number of "small entities" should undergo regulatory flexibility analysis. With respect to the Revenue Sharing Program, small entities are defined as recipient governments with populations below 50,000. The interim rule is not expected to have a significant economic impact on small governmental units. It is hereby certified that this interim rule does not have a significant economic impact on small governmental units.

Executive Order 12291—"Federal Regulation"

The interim rule does not constitute a "major rule" within the meaning of section 1(b) of Executive Order 12291, entitled "Federal Regulation." A regulatory analysis is not required.

Need for Immediate Guidance

This interim rule is needed to enable the Department to timely reduce the amounts held in reserve to a level actually required to pay adjustments for prior Revenue Sharing payments. Given the repeal of the Revenue Sharing Act, the State Adjustment Reserves are no longer necessary or appropriate to effectuate the wind-down of the Revenue Sharing Program. Accordingly, compliance with the notice of proposed rule-making provisions of 5 U.S.C. 553(b) or the effective date limitation in 5 U.S.C. 553(d) would be impractical and contrary to the public interest.

List of Subjects in 31 CFR Part 51

Accounting, Administrative practice and procedure, Civil rights, Handicapped, Aged, Indians, Revenue sharing, Reporting and recordkeeping requirements.

31 CFR Part 51, is, therefore, amended in the manner set forth below.

Dated: October 30, 1986.

Kent A. Peterson,

Acting Director, Office of Revenue Sharing.

PART 51—FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS

1. The authority citation for Part 51 is revised to read as follows:

Authority: Section 14001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272); Treasury Department Order No. 224, dated January 26, 1973 (38 FR 3342) as amended by Treasury Department Order No. 103–1 dated March 18, 1982. References to the Revenue Sharing Act in the regulation shall be read as providing the standards for determining compliance with section 14001 of the COBRA.

2. Section 51.26(a) is amended by revising the heading and adding a new paragraph (a)(3) to read as follows:

§ 51.26 Reservation of funds; adjustment of entitlements and allocations.

* * * * *

(a) *Reservation for State adjustment reserves; National Adjustment Reserve.* * * *

(3) The Director shall establish a National Adjustment Reserve. The National Adjustment Reserve shall be funded with such amount in the State Adjustment Reserves as is determined by the Director to ensure that there will be sufficient funds available to cover adjustments due after a final allocation for an entitlement period. The amounts in the National Adjustment Reserve may be used for the same purposes as those in the State Adjustment Reserves and shall remain until the Director determines that the liabilities of the Trust Fund are discharged or sufficiently diminished to permit their final disposition.

[FR Doc. 87–101 Filed 1–5–87; 8:45 am]

BILLING CODE 4810–28–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400 and 3470

[Circular No. 2591; AA-660-87-4121-02]

Coal Management Provisions and Limitations; Amendments To Incorporate Changes Required by Mineral Leasing Act of 1920; Corrections

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; corrections.

SUMMARY: The Department of the Interior is correcting errors in the final rulemaking on regulatory changes required by section 2(a)(2)(A) of the Mineral Leasing Act, which appeared in the **Federal Register** on December 5, 1986 (51 FR 43910).

FOR FURTHER INFORMATION CONTACT: Allen B. Agnew at (202) 343–7722.

SUPPLEMENTARY INFORMATION: The Department of the Interior, Bureau of Land Management, promulgated regulations implementing section 2(a)(2)(A) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 201(a)(1)(A)), on December 5, 1986 (51

FR 43910). These regulations contained errors which are discussed briefly below and are corrected by this notice.

James E. Cason,

Acting Assistant Secretary of the Interior.

December 30, 1986.

The following corrections are made in 43 CFR Parts 3400 and 3470, Coal Management-General; Coal Management Provisions and Limitations, published in the **Federal Register** on December 5, 1986 (51 FR 43910).

1. In § 3400.0–5(rr)(5), page 43922, first column, in the sixth line of paragraph (5), change "lessee-specific" to "working interest holder-specific."

This change was discussed in the preamble to the final rulemaking at page 43919, second column, last full paragraph, but was inadvertently omitted from the final regulations.

2. In § 3400.0–5(rr)(6)(i), page 43922, first column, in the fifth line of paragraph (6)(i), change "§ 3480.0–5(a)(2)" to "§ 3480.0–5(a)."

The correct cross-reference is to § 3480.0–5(a)(27) at present, but because an amendment and possible renumbering of that provision are anticipated, a reference to § 3480.0–5(a) is sufficient.

3. In the eleventh line of the same paragraph (6)(i), remove the phrase "and failure of customers to take coal" and substitute the phrase "coal buyer's operations of its power plants that require the coal buyer to stop taking coal shipments for a limited duration of time."

The regulation was intended to be modeled as addressed in the preamble. The final regulation did not correctly state the concept described on page 43916, first column, last sentence of the paragraph ending in that column. To avoid confusion, the final rulemaking is corrected by using a statement from the preamble to replace the phrase "failure of customers to take coal."

4. In § 3470.1–2(e)(4)(iv)(A)(*3*), page 43922, third column, remove the word "the" from the first line of paragraph (*3*) and insert in its place the words "an application for arm's-length lease."

This change is made to clarify and emphasize that the paragraph refers to pending assignments between entities qualified to make assignments without violating the prohibitions in section 2(a)(2)(A).

5. In § 3470.1–2(e)(5), page 43923, first column, remove the commas and the words "or any of its affiliates" from lines 6 and 7 of paragraph (5).

This change was discussed in the preamble of the final rulemaking at page 43920, first column, last full paragraph, and inadvertently omitted in this provision of the final regulations.

[FR Doc. 86–132 Filed 1–5–87; 8:45 am]

BILLING CODE 4310–84–M

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

Voting Rights Program, Arizona

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is establishing two new offices for filing applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

DATES: This rule is effective immediately upon publication. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before February 5, 1987.

ADDRESS: Send or deliver comments to Jeremiah J. Barrett, Coordinator, Voting Rights Program, Office of Personnel Management, Room 7H09, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jeremiah J. Barrett, (202) 632–5564.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Navajo and Apache Counties, Arizona, as additional examination points under the provisions of the Voting Rights Act of 1965, as amended. He determined on October 31, 1986, that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, OPM will appoint Federal examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Under section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately in view of the pending elections to be held in the subject counties, where Federal observers will observe elections under the authority of the Voting Rights Act of 1965, as amended.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it adds two new locations to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedure, Voting rights.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 45 CFR Part 801 as follows:

PART 801—VOTING RIGHTS PROGRAM

1. The authority citation for Part 801 is revised to read as follows:

Authority: 5 U.S.C. 1103; secs 7, 9, 79 Stat. 440, 411 (42 U.S.C. 1973e, 1973g).

2. Section 801.202, Appendix A, is amended by adding alphabetically the State of Arizona to read as follows:

§ 801.202 Times and places for filing and forms of application.

* * * * *

Appendix A

* * * * *

Arizona

County; Place for filing; Beginning date.

Apache—Window Rock Motor Inn, P O. Box 1687, Window Rock, Arizona; October 31, 1986.

Navajo—Holiday Inn, P.O. Box 307, Kayenta, Arizona: October 31, 1986.

* * * * *

[FR Doc. 87-158 Filed 1-5-87; 8:45 AM]

BILLING CODE 6325-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 22, 25, and 90

[Gen Docket Nos. 84-1231, 84-1233, and 84-1234]

Cellular Radio, Private Land Mobile Radio, and a Mobile Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On October 22, 1986, the Commission published a Final Rule document in this proceeding concerning Cellular Radio Private Land Mobile Radio, and a Mobile Satellite Service (51 FR 37398). This document clarifies the regulatory text of that rule.

FOR FURTHER INFORMATION CONTACT: Rodney Small (202) 653-8116.

SUPPLEMENTARY INFORMATION: For the purpose of clarification, the amendatory language for § 2.106 (page 37399) is corrected to indicate that the MHz band for 890-902 is to be replaced by bands 894-896, 896-901, and 901-902.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-10 Filed 1-5-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 60985-6232]

Foreign Fishing; Foreign Fee Schedule

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA implements the 1987 fishing fee schedule for foreign vessels in the exclusive economic zone (EEZ). Under this fee schedule, foreign vessels will pay for 20.12 percent of the FY 1986 Magnuson Fishery Conservation and Management Act (Magnuson Act) costs. This rule is needed to comply with section 204(b)(10) of the Magnuson Act.

EFFECTIVE DATE: January 1, 1987.

ADDRESS: Copies of the final regulatory impact review for this action may be obtained from the Fees, Permits, and Regulations Division, F/M12 at the telephone number below.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 202-673-5315.

SUPPLEMENTARY INFORMATION: NOAA implements a schedule of fees for fishing during 1987 by foreign vessels in the exclusive economic zone (EEZ). (Pub. L. 99-659 replaced references to the "fishery conservation zone" in the Magnuson Act with "exclusive economic zone".) The schedule sets a target for fee collections of $40.784 million, of which $40.600 million are to be collected in poundage fees, and the balance by 1987 permit application fees of $184 per vessel. The schedule also requires that vessels of a nation falling under "higher fee" criteria must pay an additional incremental amount of 74.54 percent of their poundage fees for the general fund of the U.S. Treasury.

Background

Section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 et seq.) states, in part, "The fees * * * shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act * * * during (FY 1986) the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the exclusive economic zone during (1985) bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during (1985)." [16 U.S.C. 1824(b)(10)(B)]. The fiscal and calendar years used in this fee schedule are shown above.

However, if the Secretary of Commerce, in consultation with the Secretary of State, finds a fishing nation to be "harvesting anadromous species of United States origin at a level that is unacceptable to the Secretary", or "failing to take sufficient action to benefit the conservation and development of United States fisheries", that is, meeting a "higher fee" criterion, subparagraph 204(b)(10)(C) applies. Subparagraph 204(b)(10)(C) requires the Secretary to impose fees for that nation which bear to the ratio of the fish harvested by foreign vessels in the EEZ to the aggregate quantity of fish harvested by both foreign and domestic vessels in the EEZ only. Removing the quantity of U.S. harvested fish caught in the territorial waters from the formula increases the ratio and thereby the fees that the nation must pay.

Foreign fee schedules are established under the Magnuson Act for each calendar year following the provisions of section 204(b)(10). On October 14, 1986, NOAA published a proposed schedule of fees for foreign fishing in 1987 for public comment at 51 FR 36569. In that proposal, NOAA estimated the total FY 1986 costs of carrying out the purposes of the Magnuson Act (referred to hereafter as Magnuson Act costs) to be $202.705 million.

Foreign fishing fees are related to total Magnuson Act costs in the same proportion as the ratio of the catches taken by foreign vessels to the total catches in the EEZ and territorial waters. In 1985 (which is the calendar year preceding FY 1986 as well as the most recent year for which NOAA has published statistics) foreign vessels harvested 20.12 percent of the total catch. (This harvest rate is a revision of the rate of 20.26 percent published at 51 FR 36569. The revision results from changing Table 2A of the proposed rule to include more current recreational catch data. The recreational catch is revised upward to 216,049 mt from 176,708 mt based on 1985 data for the Atlantic, Gulf and Pacific. No change is made in Table 2B because 1985 data were used to derive the published ratio of 35.05 percent.) After applying the revised harvest rate, NOAA targets $40.784 million as the amount to be recovered from foreign fishing fees in 1987. If all nations were assessed the higher fees, $71.048 million would be the amount targeted for recovery from foreign fishing in 1987.

NOAA estimated that about $0.184 million would be recovered by 1987 permit application fees and therefore had proposed that the balance of $40.880 million be recovered by the 1987 poundage fees. The proposed foreign permit application fees were based on estimated costs of processing 1987 applications. A fee of $184 was proposed for each 1987 vessel application.

The amount proposed to be collected from the lower poundage fees was apportioned in relation to the estimated exvessel values and tonnages of the respective species harvested by foreign vessels. The 1987 foreign catch of each species was projected and values of the catches of all species were summed to establish a total exvessel value for the foreign catch in the EEZ in 1987. The ratio of the amount proposed to be recovered from poundage fees to the total exvessel value of the projected 1987 foreign catch in the EEZ determined the proposed fee assessment rate. Vessels of countries falling under a higher fee criterion would not only pay the poundage fees but also pay an

incremental amount, proposed at 51 FR 36569 to be 73.35 percent of their poundage fees.

The public comment period on this proposal closed on November 13, 1986. Comments received after that date but prior to NMFS approval of the final rule by Assistant Administrator for Fisheries, NOAA, were also considered. NOAA responds to these comments and adopts a final rule to set 1987 foreign fishing fees. Readers should refer to 51 FR 36569 and the documents referenced therein for a detailed explanation of the proposed rule.

Public Comments

No comments were received on the proposed 1987 surcharge for the Fishing Vessel and Gear Damage Compensation Fund or the proposed 1987 permit application fee. Therefore, these proposals are adopted as final.

Twelve (12) comments were received on the poundage fee provisions of the proposed rule and the draft regulatory impact review. Comments were received on behalf of: the Governments of Japan, the Republic of Korea, the German Democratic Republic (*ex parte*, included in the record), and Spain. Two U.S. companies and one fisherman participating in the Atlantic mackerel fishery and one U.S. company engaged in the Atlantic squid fishery also provided comments. Separate comments, were received from the Japan Fisheries Association which were expanded in *ex parte* communications included in the record. The Mid-Atlantic Fishery Management Council and the Chairman of the Foreign Fishing Oversight Committee of the New England Fishery Management Council also provided comments.

1. General Comments on the Foreign Fishing Fee Schedule

A number of general comments were received on the trends in U.S. foreign fishing fees. These comments addressed increases in fishing fees over the last few years and specifically effects of the large increase proposed in 1987.

a. *Comment:* One commenter contends that inflated fees together with protectionist management policies have artificially inflated the economic position of pollock in the world market.

Response: The statement that U.S. fees and policies have inflated the economic position of pollock in the world market may exaggerate the influence of U.S. fishing fees and policies since only twenty-five percent of the world harvest occurs in the EEZ. NOAA believes that on the whole any increase in exvessel values in 1986 which is reflected in this fee schedule, particularly the value of pollock, results from competition for supplies in traditional markets. U.S. policies have encouraged greater participation in these markets by U.S. interests and therefore promoted the objectives of the Magnuson Act. NOAA does not view the comment as a valid argument for modifying its pollock exvessel value or its approach for setting fishing fees.

b. *Comment:* One comment stated that the 1987 incremental amount for the higher fees, 73.35 percent, does not correspond to an increase for inflation or increases in product prices.

Response: The incremental amount to be paid by certain countries is not an amount determined by market prices or related conditions. It is simply calculated by comparing catches by U.S. vessels and by foreign vessels in the EEZ. The detailed explanation of the incremental amount and how NOAA determines that amount consistent with Pub. L. 99-272 is contained in 51 FR 32089, September 9, 1986. The proposed rule recalculated the incremental amount using 1985 catch statistics for countries required to pay higher fees under the relevant criteria for the balance of FY 87 and during the first quarter of FY 88. NOAA may not therefore adjust the incremental amount in response to the contention that the amount does not correspond to increases for inflation or product prices.

c. *Comment:* One commenter alleged NOAA's fees are a tax on foreign operations because they do not bear a close relationship to benefits to the fee payer. The fees are a violation of Treaties of Friendship, Commerce and Navigation with the United States which guarantee non-discriminatory "national treatment" for foreign businesses operating within the jurisdiction of the United States.

Response: NOAA's fees are not a tax on foreign operations because they are reasonably designed to recover a portion of the total Magnuson Act costs related to foreign fishing. These costs bear a close relationship to the benefits provided to foreign vessel owners and operators. Moreover, although the fee schedule does not seek to recover fees in excess of costs, as NOAA responded earlier (50 FR 460, January 4, 1985) the language of the Magnuson Act and recent understandings of international law would provide the authority to collect fees in excess of costs. Furthermore, the Magnuson Act now contains a provision for determining even higher fees based only on catches in the EEZ. Discussions with staff of the Department of State have led NOAA to conclude that Treaties of Friendship, Commerce and Navigation are not appropriate considerations when implementing the foreign fee schedule. Setting fees is a function governed only by the statutory requirements of section 204(b)(10) of the Magnuson Act.

d. *Comment:* Hold fees temporarily at the 1986 level while NMFS consults with foreign fleets consistent with the court settlement of 1984 with the Japanese Fleet.

Response: This comment infers that NOAA has not complied with the terms of the referenced settlement, and that a new fee schedule should not be implemented without the agreement of the foreign fleets. By the terms of settlement of the *Order of Dismissal* filed on April 5, 1984, NOAA agreed to review improved procedures with the Japan Fisheries Association (JFA) for determining the exvessel values which are used to assess fees by species. Since that time, NOAA has requested information each year from the foreign fleets on current exvessel values prior to preparing proposed fee schedules. As noted in 51 FR 36569, the information for the 1987 proposal was requested on June 11, 1986, and information provided by representatives of foreign fishing nations in reply to this request was considered in the formulation of the 1987 proposed fee schedule. A procedure has been developed therefore to allow foreign interests an opportunity to provide data for the proposed schedule. Moreover, the method employed to develop fees is fully disclosed, and explained in detail in proposed rules to facilitate meaningful reviews. Terms of the settlement do not provide for agreement by foreign interests to what fees should be assessed since section 204(b)(10) assigns that role to the Secretary, after consultations with the Secretary of State. NOAA therefore is not suspending actions on the 1987 fee schedule because its actions are in compliance with the settlement.

2. Method and Data Used To Determine the Foreign Fee Share of FY 1986 Magnuson Act Costs

The discussion contained in the proposed rule on the catch statistics used to determine the foreign fee share of the FY 1985 Magnuson Act costs received significant attention. Some commenters allege that NOAA is in violation of the Magnuson Act because it does not employ statistics from the year preceding the date of the fee schedule to determine the foreign fees.

a. *Comment:* NOAA's rule improperly uses the wrong year's catch data and is therefore *ultra vires* the statute. In making his argument, the commenter

alleged the following. The fee-setting calculation is based on two-year-old data which clearly exceeds the authority Congress delegated in section 204(b)(10). Overcharges to date resulting from using two year-old catch data were far less than would result under the proposal for 1987 which increases fees by 94 percent. Past overcharges have been about 14 percent but because of the drastic reduction in catch between 1985 and 1986, the error for the 1987 fee will be nearly 100 percent. Congress intended that the fee provision would be based on the fair and equitable principle of allocating the total cost between two user groups, the U S fishermen and foreign fishermen, in proportion to their respective catches for the preceding year

Response This comment is a modified and expanded restatement of comments on earlier fee schedules and recently on the proposed 1986 foreign fee schedule. A response to that comment was published at 51 FR 202, January 3, 1986 (under comment grouping number 2). NOAA reaffirms its position as stated in the final rule of January 3, 1986. NOAA is not in violation of section 204(b)(10) of the Magnuson Act by using the most recently published catch data to set the fee schedule, even though the catch data used to determine the foreign fee costs are two years older than the effective period of the fee schedule

NOAA advised Congressional staff of the unavailability of statistics for the year preceding the effective period of the fee schedule prior to enactment of Pub L. 96-561, which amended the Magnuson Act to recover costs from foreign fishing. Since that time Congress has amended section 204(b)(10) through Pub. L. 99-272 and Pub. L. 99-659 but it has not elected to revise or clarify the provisions concerning these statistics. Therefore, NOAA concludes that the fee schedules as constructed by NOAA have been consistent with the Congressional intent enacted through Pub. L. 96-561.

Since catch statistics for the year preceding the fee schedule are not available, the most current statistics, i.e., statistics for the year preceding the year in which the fee schedule is prepared, are the best available means of approximating costs to be recovered from foreign fishing during the next year. Because foreign fishing is diminishing annually, the ratio so calculated should ensure that "at least" the amount required by section 204(b)(10) is collected from foreign fees.

b. *Comment:* Three commenters stated that the preceding year's catch data is, for all practical purposes, already known at the time the proposed rule is published. By one commenter's calculations, assuming level Magnuson Act costs, this would result in a constant average fee of $40/mt each year. Alternatively, the preceding fiscal year's catch data can be used and would be consistent with the reference period for calculating total Magnuson Act costs. The "at least" provision of section 204(b)(10) would allow a margin for conservatively estimating catches and any surplus could be refunded to foreign countries at the end of the year.

Response: NOAA showed at 51 FR 202 that, even if NOAA could predict the catch statistics for the previous calendar year, fee collections based on that prediction would generally fall short of the amounts required by the Magnuson Act. Between the years 1982 through 1985, NOAA on the average collected annual fees which were $875,000 below the average fee schedule target but $2,425,000 above the minimum amount required by the Magnuson Act. Had NOAA been able to set the annual fee schedule target precisely at amount required to be recovered by the Magnuson Act, the average annual collections would have fallen short of the amount required by the Magnuson Act by $750,000 each year. Thus, NOAA believes its system for establishing the fee target is a consistent and reasonable approach to meeting its responsibilities under section 204(b)(10) of the Magnuson Act

On the view that more current statistics are available or can be accurately estimated at the time a fee schedule is prepared, NOAA stands on its response to comment 2.e. at 51 FR 202. In that response, NOAA described the reasons for delays in compiling catch statistics for a year, particularly statistics on domestic landings which are derived from the coastal States. These delays prevent NOAA from compiling statistics for both the preceding calendar year and the preceding fiscal year in time for the final fee schedule

NOAA believes that it is not possible to accelerate or accurately project such statistics. The response to comment 2.d. at 51 FR 202 explains that projections of catch statistics, particularly data on U.S. landings, could be shown to possibly lead to a shortfall in fee collections required by the Magnuson Act In this case, the comment focuses on the large reductions in the 1986 TALFFs allocated for foreign fishing to date, reductions which are not reflected in the 1985 statistics used in this fee schedule Even projections based on catch trends in prior years would not reflect 1986 reductions and could not address the commenters' concern.

It was said that NOAA can compile catch data for 1986 which, while not yet complete, could be used to accurately estimate the final 1986 catch statistics. That data should be used to apportion FY 86 Magnuson Act costs to foreign fishing to take into account large reductions in 1986 TALFFs. NOAA does not agree that even the coarse precision of the data envisioned by the commenter exists. A proposed schedule of fees is prepared and usually approved in September of the preceding year. Experience shows that foreign fishing nations conduct their major fishing efforts in the latter half of each calendar year. Only about 25 percent of the annual fees are billed for fishing which occurs during the first six months of the year About 50 percent of the fees are for third quarter fishing with the balance for fishing during the fourth quarter Statistics for each quarter are generally not available until 45 to 90 days after the end of the quarter because vessel by vessel catch data are provided by U.S. observers who may not have completed trips originating in a prior quarter. Preliminary quarterly catch data are subsequently reviewed with each foreign representative before the catch statistics are approved and bills are issued against letters of credit This means that the September estimate of final statistics for the year could *at best* be based on a six-month sample for that year and, moreover, a sample during which only about twenty-five percent of the foreign fishing effort for that year had taken place NOAA believes adoption of this system for apportioning costs could seriously undermine recovery of the minimum costs required by the Magnuson Act There would be no assurance that underestimated fees would be recovered after reconciliation of the catch statistics. Therefore, NOAA does not revise the catch data used for the 1987 fee schedule

Conclusion

After reviewing all comments concerning the methods for annually determining the foreign fee share of total Magnuson Act costs, NOAA finds no basis for changing its method or the data used for establishing the fee target in the 1987 foreign fee schedule

3. Methods of Compiling Total Magnuson Act Costs

Several comments concerned NOAA's and Coast Guard's methods for estimating fiscal year costs of carrying out the purposes of the Magnuson Act

a *Comment.* NOAA's rule exceeds the statutory authority granted by section 204(b)(10) of the Magnuson Act to

recoup " the total cost of carrying out the provisions of this Act." This comment is intended to have NOAA confine its estimates of total Magnuson Act costs to costs which would not be incurred "but for" the Magnuson Act. The commenter also states fee schedules should not be discriminatory against foreign nations, not render any fishery uneconomic, and only recover costs incurred to carry out the purposes of the Magnuson Act.

Response: NOAA has responded to similar comments in earlier fee schedules, for example see 51 FR 202, January 2, 1986, and 50 FR 460, January 5, 1985. Responses to general comments on costs of carrying out the purposes of the Magnuson Act discussed under item 2 of 50 FR 460 set out NOAA's position in detail on costs which may be recouped by the fee schedule. NOAA stands by those replies. NOAA interprets the foreign fee language to refer to all costs of "carrying out the provisions of the Act . . ." including costs under other authorizations. A recent General Accounting Office (GAO) audit did not find Magnuson Act costs to be overstated. GAO, in fact, suggested that other and greater costs should be associated with the Magnuson Act. NOAA adopted the GAO suggestions in the 1986 schedule (see 51 FR 202) and they are reflected in this schedule as well. It does not agree that it is exceeding the statutory authority of the Magnuson Act.

The schedule also does not discriminate between fishing nations since each nation would pay the same amount for the same fish, unless an incremental amount is required under provisions of Pub. L. 99-272. There is nothing in the Act which states that the fee schedule not discriminate against foreign nations as a whole, presumably in favor of U.S. fishermen. Section 204(b)(10) does not require fees to be paid by U.S. fishermen and discretionary provisions of the Magnuson Act limit any fees that could be required of U.S. fishermen to the administrative costs of issuing permits. Thus, the Magnuson Act does not attempt to create a balance between fees paid by foreign nations and fees paid by U.S. fishermen.

Nor does the Magnuson Act require that fees not render any fishery uneconomic. Very limited information is available on the fiscal operations of foreign fishing companies and requests to reveal such information are never successful. Thus, any judgment on the economic effect of a fee schedule on foreign fishing companies is speculative at best. In addition, there would be no reason for the United States to protect what could be inefficient foreign operations in a fishery for the benefit of that foreign nation—for example, to maintain lower U.S. fees in a fishery which would obviate the need for a foreign government to take action on its part to sustain a company if it served some national political purpose.

NOAA therefore believes the fee schedule is only to address the recovery of costs under the statutory authority of section 204(b)(10).

b. *Comment:* NOAA, by failing to disclose any coherent or intelligible basis for its computations or costs and for the method of allocation used to establish its fees, has violated the Administrative Procedure Act (APA).

Response: NOAA does not agree that it has not fully disclosed the basis for its fee computations and the method of allocations used to establish its fees. Each proposed rule since 1982 has discussed in detail the methods and computations used to establish fees. In support of this position, NOAA has observed that the Japan Fisheries Association provides not only wholesale values of the species harvested in the EEZ to NMFS but also the ratios used by NMFS to relate exvessel values of other Alaska groundfish to the value of Alaska pollock, exhibiting a clear understanding of NOAA's methodology.

With regard to its compilation of costs, NOAA routinely makes available to any interested party the instructions and guidance to NMFS field offices for estimating Magnuson Act costs, as well as access to current year operating plans (CYOPs), and other information related to this process. The method of determining costs as well as the apportionment of these costs between the Magnuson Act and other tasks have been reviewed by GAO and suggestions resulting from GAO's review have been acted on to improve the process. The results of the review and GAO's description of the process have been provided to all interested parties. Therefore, NOAA believes it has disclosed information consistent with the APA.

4. Species Poundage Fees

Only the Atlantic squid and mackerel exvessel values proposed by NOAA were specifically addressed. A comment on the role of NOAA's policies and fees in promoting a greater valuation of pollock in the world market was addressed under comment grouping number 1.

Comments: Eight comments addressed the exvessel value proposed for Atlantic mackerel, which was said to be overestimated in relation to world prices. Mackerel prices were provided for Canadian and Scottish products. The commenters advocated a reduction in exvessel value to $110/mt. One Council noted that it anticipated a 1987 harvest of 40,000 mt rather than the 25,000 mt estimated; this increase in harvest when coupled with fees based on an exvessel value of $110/mt would leave the total fees proposed by NOAA from that fishery unchanged.

Response: Target fees are not established for each fishery; thus NOAA considers independently the questions of whether the projected 1987 Atlantic mackerel harvest is underestimated, and whether the proposed exvessel value of Atlantic mackerel is greater than the world market value. Since the Mid-Atlantic Council is responsible for setting the Atlantic mackerel TALFF specification, NOAA adjusts the estimated foreign catch of Atlantic mackerel in Table 5 of 51 FR 36569 to read 40,000 mt and the total estimated foreign catch in that table to read 447,041 mt.

Data provided by other respondents on this issue indicate that an exvessel value of $139/mt for Atlantic mackerel may be overstated. Prices quoted are $90–150/mt for Africa and the Mid-East (after removing freight costs), $150/mt in Scotland, and $116/mt to Canadian vessels, with U.S. fisherman receiving about $110/mt or less when landed in U.S. ports. Since the above prices range between $90 and $150/mt but do not fully support $110/mt, the exvessel value of $139/mt is changed to a more representative value of $124/mt, and the species fee is reduced accordingly.

b. *Comment:* One comment addressed the exvessel value proposed for Atlantic squids, in particular, the value for *Illex* squid. The selected exvessel value of $390/mt was said to be greatly in excess of the price during the 1986 season. Although not as severe, the fee for *Loligo* squid was also said to be high.

Response: The commenter provided information to support a reduction in the exvessel value proposed for *Illex* squid to $220/mt. No changes in the exvessel value are made for *Loligo* squid since the average value of $660/mt stated by the commenter is nearly equal to the $662/mt proposed by NOAA and the higher fee results from the rate at which fees are assessed rather than the exvessel value of the species.

Conclusion: Three changes are made as the result of comments. The exvessel values of Atlantic mackerel and *Illex* squid are reduced to $124 and $220/mt respectively, and the 1987 harvest of mackerel is reestimated as 40,000 mt.

The poundage fee schedule is revised accordingly.

5. The Regulatory Impact Review (RIR).

Comments on this matter concerned the preparation of additional documents and one option discussed in the draft RIR.

a. *Comment:* Two commenters claimed that NOAA has violated the National Environmental Policy Act by not preparing an environmental assessment or environmental impact statement.

Response: This comment was addressed in final rules for earlier fee schedules, most recently at 50 FR 460, January 4, 1985. NOAA's response to this comment is that the fee schedule is a programmatic function with no potential for significant environmental impacts.

This comment as well as comments in prior years on this issue are apparently to indicate that fee schedules have affected the harvest of fish made available under FMPs in ways not considered in the environmental assessments prepared for the FMPs. There is no evidence offered to indicate that the fees have caused such reductions or increases in harvests. A review of the efficiency of the foreign fleets shows that 76.9 percent of the foreign allocations were harvested in 1982 when the fee assessment rate was 11.5 percent of the exvessel values. By 1985, when the fee assessment rate reached 25.9 percent, efficiency had increased to 90.6 percent of the allocations, indicating that the magnitude of the TALFFs and subsequent allocations rather than the fees governed whether fish remained unharvested. Commenters have not provided specific information on which fleets will not fish and therefore which species and what amounts will be left unharvested or which allocations will not be accepted as a result of the fees proposed for 1987. Thus, NOAA's conclusion that the fee schedule is a programmatic function is supported in substance by the absence of any significant environmental impacts following the promulgation of earlier fee schedules, in contrast to the effects of changes in fishery management plan specifications.

b. *Comment:* An objection was raised to a statement in the draft RIR which noted that an anticipated shortfall in fee collections in 1986 could be compensated for by the margin of total fee collections from 1981 through 1985 which exceeded the Magnuson Act requirement.

Response: This statement was not intended to indicate a reason for selecting alternative number four rather than alternative number one, which would have NOAA extrapolate the catch statistics for 1986. It notes that there is an anticipated shortfall in 1986 fee collections (which occurs because of the severe reduction in the Alaska pollock TALFF after the 1986 fee schedule was in effect) and then indicates that NOAA believes it is prudent to employ the "at least" provision of section 204(b)(10) to provide margins for meeting the requirements of the Act. Tho discussion following the first alternative has been clarified in the final RIR to make these points clearer.

Summary

The foregoing describes the relevant issues raised by respondents during public comment period and states NOAA's responses to the comments. NOAA has considered all relevant comments, responded to them, and made appropriate changes in the proposed rule prior to adopting it as final. The following changes have been made:

1. The harvest rate is reduced to 20.12 percent with the inclusion of 1985 recreational catch data for the Atlantic, Gulf and Pacific. The foreign harvest in the EEZ remains 35.05 percent of the total catch in EEZ.

2. As a result of the change in harvest rate, the 1987 foreign fishing fee target is reduced to $40.784 million, with $40.600 million to be collected in poundage fees and $0.184 million in permit application fees. If all nations were assessed the higher fees, $71.048 million would be the amount to recover from foreign fishing.

3. The total estimated foreign catch for 1987 is increased to 447,041 mt as the result of a 15,000 mt increase in the estimated harvest of Atlantic mackerel.

4. Exvessel values of Atlantic mackerel and *Illex* squid are reduced to $124/mt and $220/mt respectively. This change together with the change in the estimated 1987 mackerel harvest results in an increase in the total exvessel value of the 1987 estimated foreign catch to $85,271,056.

5. The combined changes in the poundage fee target and the total foreign exvessel value result in a reduction in the fee assessment to 47.61 percent of the exvessel value of each species. The final incremental amount for a nation meeting a "higher fee" criterion is 74.54 percent of its poundage fees.

6. Final poundage fees for all other species are based on this final assessment rate and the respective exvessel values proposed at 51 FR 36569. The final poundage fees are listed in Table 1 of § 611.22(b) as amended by the regulatory text of this final rule.

Classification

NOAA prepared a draft RIR that discussed the economic consequences and impacts of the proposed fee schedule and its alternatives. Comments on the draft RIR were considered and appropriate changes were made in the final RIR. Copies of the final RIR are available at the above address. Based on the RIR, the Administrator, NOAA, determined that the proposed schedule does not constitute a major rule under E.O. 12291. The regulatory impact review demonstrates that the fee schedule complies with the requirements of section 2 of E.O. 12291.

The General Counsel for the Department of Commerce certified that the proposed fee schedule will not have a significant economic impact upon a substantial number of small entities for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This certification was forwarded to the Chief Counsel for Advocacy of the Small Business Administration. Because the fee schedule will not have a significant economic impact upon a substantial number of small entities, a regulatory flexibility analysis was not prepared.

The proposed fee schedule has no direct impact on the fishery resources in the EEZ. At the most, a fee schedule might affect the harvesting strategy of foreign fishing vessels; however, the schedule meets the criterion that fees should minimize disruption of traditional fishing patterns because the 1987 fees are directly related to exvessel values. Since this fee schedule will not prevent the harvesting of the available total allowable level of foreign fishing (TALFF), and the environmental impact of harvesting the TALFF is described for each fishery management plan, no further environmental assessment is necessary.

The 30-day delay in implementation required by the Administrative Procedure Act is waived so that the fee schedule can be in place on January 1, 1987. If a new schedule is not in place on that date, foreign fishing vessels will not be allowed to harvest fish, and the U.S. Treasury consequently will lose revenues. Furthermore, an interruption in fishing for foreign vessels already in the EEZ would be costly to the foreign fishing companies, since their vessels would be incurring fixed operating costs while sitting idle until the 30-day period elapsed.

The final rule has no information collection provisions for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Dated: December 31, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 611— [AMENDED]

For the reasons above, 50 CFR Part 611 is amended as follows:

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 971 et seq., 22 U.S.C. 1971 et seq., and 16 U.S.C. 1361 et seq.

§ 611.22 [Amended]

2. Paragraphs § 611.22 (a), (b)(1), (c) and (d) are revised as follows:

(a) *Permit application fees.* Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $184 per vessel, plus the surcharge, if required under paragraph (d) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the fees, drawn on a U.S. bank, made out to "Department of Commerce, NOAA," must be sent to the Division Chief, Fees, Permits and Regulations Division, F/M12, National Marine Fisheries Service, Washington, DC 20235. The permit fee payment must be accompanied by a list of the vessels for which the payment is made.

(b) *Poundage fees.* (1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (d) of this section.

TABLE 1.—SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fees
Northwest Atlantic Ocean Fisheries:	
1. Butterfish	$294.25
2. Hake, red	175.69
3. Hake, silver	187.12
4. Herring, river	66.18
5. Mackerel, Atlantic	59.04
6. Other groundfish	127.60
7. Squid, Illex	104.75
8. Squid, Loligo	315.20
Atlantic and Gulf fisheries:	
9. Shark, Atlantic	201.40
10. Shrimp, royal red	(1)
Alaska fisheries:	
11. Pollock, Alaska	81.89
12. Cod, Pacific	136.65
13. Pacific ocean perch	186.17
14. Rockfish, other	309.96
15. Mackerel, Atka	112.84
16. Squid, Pacific	66.66
17. Flounders	87.13
18. Sablefish (Gulf of Alaska)	379.00
19. Sablefish (Bering Sea and Aleutian Islands)	199.50
20. Groundfish, other	101.42
21. Snails	121.89
Pacific fisheries:	
22. Whiting, Pacific	58.09
23. Sablefish	385.66
24. Pacific ocean perch	287.58
25. Rockfish, other	326.62
26. Flounders	309.96
27. Mackerel, jack	242.83
28. Groundfish, other	345.19
Western Pacific fisheries:	
29. Coral [2]	98.08
30. Dolphin fish	2,625.85
31. Wahoo	1,050.34
32. Sharks	525.17
33. Marlin, striped	882.74
34. Billfish	945.12
35. Swordfish	1,112.71

[1] Reserved.
[2] Dollars per kilogram.

* * * * *

(c) *Incremental amount.* An additional incremental amount will be added to the poundage fee Bill for Collection for fish harvested by a nation during the first quarter of the next fiscal year following notification under paragraph (10)(C) of section 204(b)(10)(C). This incremental amount will be added to all subsequent quarterly bills until the quarter specified when the Assistant Administrator notifies that nation that it has taken appropriate corrective action. The incremental amount in 1987 will be 74.54 percent of the total poundage fee in each quarter during which this provision applies.

(d) *Surcharges.* The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraph (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed, to maintain capitalization of the fund. The Assistant Administrator has waived the surcharge for 1987 fees.

* * * * *

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50 CFR Parts 611, 672, and 675

[Docket No. 61238-6238]

Foreign Fishing; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that an emergency exists in the groundfish fisheries in the Gulf of Alaska and the Bering Sea and Aleutian Islands Area which requires the immediate implementation of certain parts of proposed amendments to the Groundfish of the Gulf of Alaska and Bering Sea and Aleutian Islands Area Fishery Management Plans (FMPs). The Secretary is implementing those portions of Amendment 15 to the Groundfish of the Gulf of Alaska FMP which amend current procedures for changing harvest limits, establish a procedure for setting prohibited species catch (PSC) limits, close specified areas around Kodiak Island to non-pelagic trawling, and require weekly catch reports from all U.S. catcher/processor and mothership vessels, and those portions of Amendment 10 to the Groundfish of the Bering Sea and Aleutian Islands Area FMP that require weekly catch reports from all U.S. catcher/processor and mothership vessels. Implementation of these measures by January 1, 1987, the beginning of the new fishing year, is necessary to eliminate administrative inefficiencies in the current FMPs and their implementing regulations which could result, in certain circumstances, in violations of Magnuson Act National Standards 1 and 2, in causing U.S. fishermen to unnecessarily forego catching harvestable amounts of groundfish, and in confusion among the fleet caused by implementation of these measures during the middle of the fishing season. This action is intended to implement conservation and management measures that will allow the Secretary to respond to the best available scientific and socioeconomic information on the status of the

groundfish and king crab fisheries while providing for orderly development of the groundfish fishery in the Gulf of Alaska.

EFFECTIVE DATES: From January 1, 1987, through March 31, 1987.

The following paragraphs are suspended from January 1, 1987, through March 31, 1987:

In § 611.92, paragraphs (c)(1)(i) and (ii), (c)(2)(ii)(A), and (g); in § 672.5, paragraph (a)(3); in § 672.20, the section title and paragraphs (a), (b), (c), (d)(4) and (e); and in § 675.5, paragraph (a)(3).

The following paragraphs are added, to be effective from January 1, 1987, through March 31, 1987:

In § 611.92, new paragraphs (c)(1)(iii) and (iv), (c)(2)(ii)(D), and (i); in § 672.2, new definitions of "net-sonde device", "pelagic trawl", "processing", and "trawl"; in § 672.7 paragraph (i); in § 672.20 the section title is changed to "General limitations" and new paragraphs (d)(5), (f), (g), (h), (i), and (j); in § 672.24, paragraph (c); and in § 675.2, a new definition of "processing"; and in §§ 672.5 and 675.5 new paragraphs (a)(4) are added.

ADDRESS: Copies of the environmental assessments may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907–274–4365.

Comments on the collection of information requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (3–200 miles offshore) of the Gulf of Alaska and the Bering Sea and Aleutian Islands (Bering Sea/Aleutians Islands area are managed under the Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area FMPs. The FMPs were developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations at 50 CFR Parts 611, 672, and 675. At its meeting on September 24–26, 1986, the Council adopted Amendment 15 and Amendment 10 to the two FMPs, respectively. Amendment 15 contains six parts. Amendment 10 contains three parts. Four parts of Amendment 15 and one part of Amendment 10 are the subjects of this action. In the Gulf of Alaska FMP (1) a multi-species optimum yield (OY) is established as a Gulf of Alaska-wide range and an administrative procedure is implemented to establish 1987 harvest levels and apportionments thereof to the fishing industry, (2) an administrative procedure is implemented to establish PSC limits in the fishery, and (3) domestic trawling in specified areas around Kodiak Island is prohibited to all except pelagic trawls. In both the Gulf of Alaska and Bering Sea/Aleutians Islands FMPs, domestic catcher/processor and mothership/processor vessels are required to report their catches or receipts of groundfish weekly to the Director, Alaska Region, (Regional Director), NMFS. The Secretary is implementing these parts by emergency rule on an interim basis (1) to prevent FMP specified OYs from governing the fishery in 1987 because in certain circumstances, this might result in potential overfishing as the FMPs' OYs are not based on the best current available scientific information (national standards 1 and 2); (2) to prevent U.S. fishermen from forgoing catch of harvestable amounts of groundfish; (3) to avoid confusion in operational planning by the fishing industry, (4) to provide necessary protection of king crab around Kodiak Island; and (5) to provide for timely collection of catch information for inseason management of the fishery.

A description of and reasons for these actions follow:

FMP for Groundfish of the Gulf of Alaska

1. Establish a single OY range and an administrative framework procedure for setting 1987 annual harvest levels for each species category.

Under the current FMP, OYs are established for every groundfish species or species group being managed by the FMP. Because the status of some stocks changes annually, some OYs have had to be adjusted on an annual basis. These adjustments require that the FMP be amended, a procedure that normally takes about a year. However, proposed OY changes, which are based on the best available scientific information and are often necessary to prevent overfishing, must often be implemented immediately. For the last three years, OYs have been adjusted by emergency rule under section 305(e) of the Magnuson Act, followed by an FMP amendment. If an amendment is not in place at the time the emergency rule expired, then the former OYs are reinstated until the amendment becomes effective. This situation is not desirable for several reasons. First, OYs that are not based on the best available scientific information could come back into effect. Second, the current system is administratively inefficient, because required documentation and review procedures for the emergency rule and the amendment are duplicative. Finally, it causes confusion within the fishing industry and risks potential economic loss if harvests are prematurely terminated or overfishing were to occur as a result of out-of-date OYs being reinstated.

To resolve this problem the Council has proposed a framework procedure that allows the setting of target quotas (TQs) for each species category on an annual basis without an FMP amendment. The Council has also proposed a change in the present concept of OY contained in the FMP. Under the present concept, a separate OY is established for each species. Twenty percent of each OY is assigned to a species-specific reserve. The remaining 80 percent is then apportioned among domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF). The Council has recommended that a single OY range of 116,000–800,000 metric tons (mt) be established for all of the groundfish species for the Gulf of Alaska. The low end of the range, 116,000 mt, equals the lowest historical groundfish catch during the 21-year period from 1965 to 1986. The high end of the range, 800,000 mt, equals 95 percent of the average of the sums of the individual species MSYs over a period of five years from 1983 to 1987. The average MSY for this period is 845,670 mt.

Each year, the Council will recommend a TQ for each species category. The sum of the TQs must fall within the OY range. If the sum were to fall outside of this range, TQs would be adjusted or an FMP amendment would be necessary. Twenty percent of each TQ will be set aside as a reserve for possible reapportionment among DAP, JVP, and TALFF during the year. The remaining 80 percent will be initially apportioned among DAP, JVP, and TALFF at the beginning of the year. In recommending TQs, the Council will follow procedures similar to those followed in previous years of apportioning species-specific OYs among DAP, JVP, and TALFF. The procedure will promote full public participation both prior to and during Council meetings, and will provide for full notice and comment under

standards set forth by the Administrative Procedure Act.

In September 1986, the Council's Plan Team prepared a draft Resource Assessment Document (RAD), which proposed preliminary 1987 TQs for all managed groundfish species. TQs are specified for the regulatory areas and districts of the Gulf of Alaska and are apportioned among DAP, JVP, and TALFF. At its September meeting, the Council approved preliminary 1987 TQs and their apportionments and released the RAD for a 30-day public review.

The Secretary is promulgating this emergency rule implementing this part of Amendment 15 so that target quotas as described above may be established by January 1, 1987. By doing so, however, the Secretary is not giving any preliminary approval to this part of Amendment 15, which will be reviewing under Magnuson Act section 304. Having received the Council's recommendations for 1987 TQs and their apportionments, the Secretary has published a notice in the **Federal Register** specifying the proposed TQs and the apportionments thereof to DAP, JVP, and TALFF (51 FR 43397, December 2, 1986). Public comments on the proposed TQs and apportionments are being accepted by the Secretary until January 2, 1987. The Plan team is preparing the final RAD for the December 1986 Council meeting. At its December meeting, the Council will review public comments, take public testimony and make final recommendations on 1987 annual TQs and apportionments.

As soon as practicable after receiving the Council's final recommendations, the Secretary will publish a notice in the **Federal Register** that establishes final TQ limits for the 1987 fishing year. On January 1, 1987, or as soon as practicable after that date, the TQs and apportionments will take effect.

With the exception of the "other species" management category, the Secretary is adopting TQs for every groundfish species and species group. The "other species" category of groundfish includes those species currently of slight economic value, generally not targeted upon because of their low economic potential or high importance to the ecosystem, which lack sufficient data to allow separate management. Accordingly, a single TQ equal to five percent of the combined TQs for other target species is calculated for this category.

This action will prevent overfishing and ensure that harvest quotas for the 1987 fishing year are established using the best available scientific information. The fishing industry is able to make its operating plans on harvest quotas that are consistent with this information. Confusion among the industry and management agencies caused by implementation of these measures during the middle of the fishing year is also avoided.

2. Establish an administrative procedure for setting PSCs for full utilized groundfish species applicable to joint venture and foreign fisheries.

Certain species of groundfish are fully utilized by DAP and the Magnuson Act required that all such species be made available to DAP. Other fisheries, i.e., the joint venture and foreign fisheries, which target on other groundfish species for which they have an allocation, will catch incidentally some of the species that are fully utilized by DAP fishermen. Under the current FMP, specifications of DAP must equal OY for those species that are fully utilized. Under Magnuson Act sections 201(d)(2) and 204(b)(6)(B)(ii), no amounts of fully utilized species can be made available for harvest in foreign fisheries or in joint ventures. In addition, any mortality of fully utilized species in excess of the OY is also inconsistent with the provisions of the FMP, which provides only for a harvest equal to the specified OY for any species category.

Therefore, no foreign fishery in the Gulf of Alaska can be allowed and joint ventures could be terminated early without an amendment to the FMP or an emergency rule that would authorize the treatment of these species as a prohibited species under 50 CFR 611.11 and 672.20(d)(2). These regulations require that such species be sorted promptly and returned to the sea with a minimum of injury, regardless of condition, after allowing for sampling by an observer. In 1985 and 1986, PSC limits for foreign and joint venture fisheries were established by emergency rule under section 305(e) of the Magnuson Act. This was required before foreign fisheries could legally take place.

The Council is proposing in Amendment 15 a framework administrative procedure that allows the Council to recommend PSC limits on an annual basis without an FMP amendment. The procedure parallels almost exactly that recommended for the setting of annual TQs and the apportionments to DAP, JVP, and TALFF, discussed above. The Secretary is promulgating this emergency rule that implements for the interim this part of Amendment 15 so that target quotas as described above may be established by January 1, 1987, thereby avoiding the confusion to the industry which would be caused by implementation of these measures during the middle of the fishing year. By doing so, however, the Secretary is not giving any preliminary approval to this part of Amendment 15, which he will be reviewing under Magnuson Act section 304 (as amended).

This measure for administratively establishing PSC limits is an improvement over the status quo, because it also relieves NOAA of the administrative burden of preparing annual emergency rules or plan amendments. No measurable costs are imposed on the harvesting, processing, and marketing sectors, or on the consumers as long as PSC limits are established when necessary. Failure, however, to establish PSC limits on joint venture fisheries could result in waste of groundfish that could have been delivered as a DAP product if fishermen discard groundfish at sea. Failure to establish PSC limits on foreign fisheries would prevent these fisheries from taking place.

3. Establish four time/area closures to non-pelagic trawling around Kodiak Island for a three-year period to protect king crab.

The numbers of red king crab in the area around Kodiak Island are at historically low levels. The directed commercial king crab fishery has been closed since 1983 in an attempt to rebuild king crab stocks. No significant recruitment has occurred during the past seven years. During this same period a developing domestic groundfish fishery, using a variety of gear, has displaced most foreign fisheries. While the cause for the decline of the resource is not known, most researchers believe that the decline can be attributed to a variety of environmental factors that independently or in combination led to the depressed condition of the resource. Whether the king crab decline is due in part to commercial fishing, either directed or incidental, is unknown.

Measures to protect concentrations of king crab, especially when they are in a soft shell condition, are needed to facilitate stock rebuilding. King crab are known to concentrate in certain areas around Kodiak Island during the year. In the spring they migrate inshore to molt and mate. Approximately 70 percent of the female red king crab stocks are estimated to congregate in two areas known as the Alitak/Towers and Marmot Flats (see Figure 1 in § 672.7). The Chirikof Island and Barnabas areas also possess concentrations of king crab but in lesser amounts. Past studies have shown that most king crab around Kodiak molt and mate from March through May, although some molting crab can be found during late January

through mid-June. Adult female king crabs must molt to mate and extrude eggs. After molting, their exoskeleton (shell) is soft, and they are known as soft-shell crabs. The new exoskeletons take 2–3 months to harden and fill with flesh. During the soft-shell period, the crabs are particularly susceptible to damage and mortality from handling and from encounters with fishing gear. Because many of the present and potential groundfish trawling grounds overlap the mating grounds of king crab, the potential exists for substantial king crab mortality.

The mortality inflicted on king crab by any gear type is assumed to be high while the crab are in their soft-shell condition. The mortality inflicted on king crab is not known while the crab are in their hard-shell condition. Trawl fishing can kill or injure king crab in two ways. First, crabs caught in the net can be crushed during the tow or injured (often fatally) as the net is unloaded in the fishing vessel. Second, crabs might be struck with parts of the gear (e.g., trawl doors, towing cables, groundlines, roller gear), as the trawl is towed along the bottom.

In January 1986, the Council approved an emergency rule to close specified areas around Kodiak Island to bottom trawling while king crab were in their soft-shell condition. This action was approved by the Secretary and implemented on March 8, 1986 (51 FR 8502, March 12, 1986). This action expired on June 6, 1986, when the crab were no longer in their soft-shell condition. The Council assembled an industry workgroup to review recent actions taken by federal and state management agencies and to develop a long-term solution that would meet the needs of all interested fishing industry groups. Supporting the workgroup were fishery scientists and managers who presented the latest biological and fishery information on the status of the king crab stocks and on areas where commercial fishing operations for groundfish, crab, and shrimp are conducted. After reviewing the recommendations of the workgroup, the Council adopted a modified recommendation to close four areas around Kodiak Island to all trawling other than pelagic trawling for all or certain times of the year. This measure would be in effect for three years, until December 31, 1989. Before this termination date, the Council would review the need for the measure and recommend that either it be extended, revised, or rescinded.

Two types of time/area closures are defined on the basis of crab concentrations in the areas. Type I is an area where crab concentrations are high and maximum protection is necessary to promote rebuilding. Type I areas are closed year around to all trawling except with pelagic gear. Type II areas are those where crab are found but in smaller numbers than in Type I areas. Protection is necessary to promote rebuilding although rebuilding is not expected to occur as fast as in Type I areas. Type II areas are closed from February 15 through June 15 to all trawling except trawling with pelagic gear.

This emergency interim rule establishes the Alitak Flats/Towers and Marmot Flats, described in this rule at § 672.24(c)(1), as Type I areas. In these areas, no person may fish with, or have on board, a trawl other than a pelagic trawl year around. The measure also establishes the Chirikof Island and Barnabas areas, described in this rule under § 672.24(c)(2), as Type II areas. In these areas, no person may fish with, or have on board a trawl other than a pelagic trawl during the period from February 15 through June 15.

This emergency interim rule would protect about 85 percent of the Kodiak Island king crab resource from bottom trawls during their soft-shell period. It would also protect 70 percent of the king crab resource year round, while still providing bottom trawl fishing opportunities close to established processing and support facilities. A historical perspective implies that significant benefits could accrue should the king crabs recover to past levels of abundance. During the last five years (1978–1983), annual catch averaged 16 million pounds, which in 1986 dollars, would be worth $63 million, exvessel value. To the extent that this measure contributes to the full rebuilding of king crab, a benefit is conveyed to the fishing industry. The Council has recommended this portion of Amendment 15 as necessary to protect king crab stocks in these areas, particularly when they enter the soft-shell condition and begin to molt. However, since these measures cannot be implemented by amendment by January 1, 1987, the beginning of the fishing year, implementation of this emergency rule by January 1, 1987, is necessary to afford that protection to these crab stocks in the interim.

FMPs for Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area

1. Revise an existing domestic reporting requirement for at-sea catcher/processor and mothership processor vessels.

The Council at its September 1986 meeting approved a proposal to revise the existing reporting requirement at 50 CFR 672.5(a)(3) and 675.5(a)(3), which requires that any catcher/processor vessel that freezes or dry-salts any part of its catch on board and retains it at sea for more than 14 days from the time it is caught, or any mothership which receives groundfish at sea from a domestic fishing vessel and retains it for more than 14 days from the time it is received, submit to the Regional Director a weekly catch or receipt report for each weekly period, Sunday through Saturday during which groundfish were caught or received at sea. The Council has recommended in Amendment 15 and Amendment 10 that all catcher/processor and mothership/processor vessels be required to submit weekly catch reports regardless of how long their catch is retained before landing. Weekly catch reports are necessary because the large amounts of catches that might be aboard vessels would not otherwise be reported on State of Alaska fish tickets until the fish were landed, often weeks or months later.

Under the current regulations, catcher/processors and mothership/processors that land fish within 14 days are not required to submit a weekly catch report to the Regional Director. This exception to the weekly catch report requirement was allowed under the assumption that any catch landed within 14 days and reported on an Alaska Department of Fish and Game (ADF&G) fish ticket would be incorporated into the catch monitoring data base in a relatively short period of time. In practice, the catch information is not received quickly due to delays in submitting tickets by vessel operators or processors. Large, efficient catcher/processor vessels and other vessels that are fishing on small quotas can harvest those quotas over short time periods. Timely catch and effort information from these operations is necessary to foster effective fishery management. When receipt of this information is delayed, fishery managers may have already had to make critical management decisions based on incomplete information. Incorrect management decisions, as a result of incomplete catch and effort information, could result in serious over- or underharvest and substantial inconvenience and cost to the fishing industry. Compounding this problem is the fact that recent ADF&G budget cuts due to declining State revenues may result in ADF&G fish tickets being collected even more slowly.

The current reporting requirement has resulted in other problems as well. A lack of consistency of catch records has occurred for some vessels which report weekly part of the time and submit only fish tickets at other times when landings are made within 14 days. This has resulted in double counting of catch in trying to resolve catch information from the two reporting systems which has resulted in overestimates of harvest rates. This same lack of consistency in submission of weekly catch reports has made enforcing the reporting requirement nearly impossible because agents don't know, when a report is missed, whether or not the vessel landed and completed an ADF&G fish ticket. For these reasons, the Council approved this part of Amendments 10 and 15, which requires that all catcher/processors and mothership/processors submit weekly catch reports regardless of how long they retain their catch so that inseason harvest management decisions can be made using the best available information.

The Council also proposed a new definition of "processing" which means the preparation of fish to render it suitable for human consumption or industrial use, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, freezing, and rendering into meal or oil. Under this definition, any vessel that processes any part of its catch or receipts on board within the meaning of "processing" would be required to report its catches or receipts weekly to the Regional Director.

This measure conveys a benefit to the fishing industry by providing management agencies more timely information with which to manage the fisheries. It, therefore, reduces the risk of overharvesting fishery resources, which promotes more stable economic returns to the industry. Also, it reduces the risk of underharvesting the fishery resources, which allows a larger economic return to the industry in any current fishing year.

Since these measures cannot be implemented by FMP amendment by January 1, 1987, the beginning of the fishing year, implementation of this emergency rule by January 1, 1987, is necessary to avoid confusion in the industry caused by implementing a new reporting requirement during mid-season. This emergency rule is also necessary to ensure the collection of reliable and accurate catch data from the beginning of the fishing year.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act, as amended, and other applicable law. This rule is implemented for 90 days under section 305(e) of the Magnuson Act.

The Assistant Administrator also finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impractical and contrary to the public interest to provide prior notice and opportunity for comment or to delay for 30 days its effective date, under provisions of section 553 (b) and (d) of the Administrative Procedure Act. This rule must be implemented by January 1, 1987, the beginning of the new fishing year (1) to endure that 1987 harvest quotas are based on the best available scientific information and will prevent overfishing; (2) to allow foreign fishing to occur, if authorized; (3) to avoid confusion in the fishing industry caused by mid-season implementation of Amendment 15's TQ and PSC limit framework and implementation of reporting requirements in both Amendment 15 and Amendment 10; (4) to protect king crabs during the molting season; and (5) to ensure reliable and accurate catch data by implementing a revised reporting requirement at the beginning of the fishing year.

The Council prepared environmental assessments for these actions as part of the environmental assessment / regulatory impact review/initial regulatory flexibility analysis prepared for both Amendments 10 and 15 to the FMPs, and concluded that no significant impact on the quality of the human environment would result from this rule. The Assistant Administrator is reviewing these documents and will make a determination under the National Environmental Policy Act. You many obtain a copy of these documents from the address above.

This emergency interim rule is exempt from the normal review procedures of Executive Order 12291 provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

This emergency interim rule is exempt from the procedures of the Regulatory Flexibility Act, because it is issued without opportunity for prior public comment.

This rule contains collection-of-information requirements which are subject to the Paperwork Reduction Act; and which have been approved by the Office of Management and Budget under control number 0648-0016.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Parts 611, 672, and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: December 31, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Parts 611, 672, and 675 are amended as follows:

PART 611—[AMENDED]

1. The authority citation for 50 CFR Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 611.92, from January 1, 1987, through March 31, 1987, paragraphs (c)(1)(i) and (ii); (c)(2)(ii)(A); and (g) are suspended, introductory paragraph (c)(1) is revised, and new paragraphs (c)(1)(iii) and (iv); (c)(2)(ii)(D); and (i) are added to read as follows:

§ 611.92 Gulf of Alaska groundfish fishery.

* * * * *

(c) * * *

(1) TQs, TALFFs, Reserves, and PSC limits.

* * * * *

(iii) See 50 CFR Part 672, Subpart B, for procedures to determine target quotas, (TQs) domestic annual processing (DAP), joint venture processing (JVP), total allowable level of foreign fishing (TALFF), reserves, and prohibited species catch (PSC) limits. Species listed in paragraph (b)(1) and Table 1 of this section as "unallocated species" or species for which the TALFF is zero, including species for which a PSC limit has been specified, will be treated in the same manner as prohibited species under § 611.11.

(iv) *Apportionment of reserves and initial DAH, and adjustment of PSC limits.* See 50 CFR Part 672, Subpart B, for procedures to apportion reserves, initial domestic annual harvest (DAH), and adjustment of PSC limits.

(2) * * *

(ii) * * *

(D) TQ for any groundfish species, species group, or species category in a

regulatory area or district: the Secretary will issue a notice prohibiting, through December 31 of each year, fishing using trawl gear for groundfish in that regulatory area or district by vessels subject to this section, except that if the TQ for sablefish or Pacific cod in a regulatory area or district will be reached, the Secretary will prohibit fishing for groundfish in that regulatory area or district by all vessels subject to this section.

* * * * *

(i) *Inseason adjustments.* See 50 CFR Part 672, Subpart B, for procedures to make inseason adjustments. Fishing by any person contrary to a notice issued under 50 CFR 672.22 is unlawful.

PART 672—[AMENDED]

3. The authority citation for 50 CFR Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 672.2, the following definitions are added in proper alphabetical order to read as follows:

§ 672.2 Definitions.

* * * * *

Net-sonde device means a sensor used to determine the depth from the water surface at which a fishing net is operating.

* * * * *

Pelagic trawl means a trawl in which neither the net nor the trawl doors (or other trawl-spreading devices) operates in contact with the seabed, and which does not have attached to it any protective device (such as chafing gear, rollers, or bobbins) that would make it suitable for fishing in contact with the seabed.

* * * * *

Processing, or to process, means the preparation of fish to render it suitable for human consumption, industrial uses, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, freezing, and rendering into meal or oil, but does not mean heading and gutting.

* * * * *

Trawl means a funnel-shaped net that is towed through the water for fish or other organisms. The net accumulates its catch in the closed, small end (usually called the cod end). This definition includes, but is not limited to, Danish and Scottish seines and otter trawls.

* * * * *

5. In § 672.5, paragraph (a)(3) is suspended from January 1, 1987, through March 31, 1987, and a new paragraph (a)(4) is added, to be effective from January 1, 1987, through March 31, 1987, to read as follows:

§ 672.5 Reporting requirements.

(a) * * *

(4) *Catcher/processor and mothership/processor vessels.* The operator of any fishing vessel regulated under this part who processes, within the meaning of "process" under § 672.2, any groundfish aboard that vessel must, in addition to the requirements of paragraphs (a)(1) and (a)(2) of this section, meet the following requirements:

(i) Prior to starting and upon stopping fishing or receiving groundfish in any area, the operator of that vessel must notify the Regional Director of the date and hour in Greenwich mean time (GMT) and the position of such activity.

(ii) When shifting operations to a new area, the operator of that vessel must notify the Regional Director of the date and hour in GMT of beginning fishing or receiving groundfish in the new area and the position of the new fishing activity. The notice must be sent to the Regional Director within 24 hours of shifting.

(iii) The notices required in paragraphs (a)(4) (i) and (ii) of this section should be sent by private or commercial communications facilities to the U.S. Coast Guard at Juneau, Alaska, who will relay them to the Regional Director. Only if adequate private or commercial communications facilities have not been successfully contacted may the required notices be delivered via the closest Coast Guard communications station.

(iv) After notification of starting fishing by a vessel under paragraph (a)(4)(i) of this section, and continuing until that vessel's entire catch or cargo of fish has been off-loaded, the operator of that vessel must submit a weekly catch or receipt report, including reports of zero tons caught or received, for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period. Catch or receipt reports must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under § 672.4 of this part. These reports must contain the following information:

(A) Name and radio call sign of vessel;

(B) Federal permit number for the Gulf of Alaska groundfish fisheries;

(C) Month and days fished or during which fish were received at sea;

(D) The estimated round weight of all fish caught or received at sea by species or species group, rounded to the nearest one-tenth of a metric ton (0.1 mt), whether retained, discarded, or offloaded;

(E) The area in which such species or species groups were caught; and

(F) If any species or species groups were caught in more than one area during a reporting period, the estimated round weight of each, to the nearest 0.1 mt, by area.

6. In § 672.7, a new paragraph (i) is added, to read as follows:

§ 672.7 General prohibitions.

* * * * *

(i) Conduct any fishing contrary to a notice of inseason adjustment issued under § 672.22(a) of this part.

7. In § 672.20, from January 1, 1987 through March 31, 1987, the section title "Optimum Yield" is suspended and a new section title "General Limitations" is added; paragraphs (a), (b), (c), (d)(4), and (e) are suspended and new paragraphs (d)(5), (f), (g), (h), (i), and (j) are added, to read as follows:

§ 672.20 General limitations.

(d) * * *

(5) In any regulatory area where the TQ in Table 1 of paragraph (f) of this section for any species is "0" (zero), any catch of that species by a vessel regulated by this part in that fishing area will be considered catch of a "prohibited species" and must be treated in accordance with this paragraph.

* * * * *

(f) *Harvest limits.*—(1) *Optimum yield.* The optimum yield (OY) for the fishery regulated by this part and by 50 CFR 611.92 is a range of 116,000 to 800,000 mt for target species and the "other species" category in the Gulf of Alaska management area, to the extent this amount can be harvested consistently with this part and 50 CFR Part 611, plus the amounts of "nonspecified species" taken incidentally to the harvest of target species and the "other species" category. The species categories are defined in Table 1 of this section.

(2) *Target quota.* The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will specify the annual target quota (TQ) for each calendar year for each target species and the "other species" category, and will apportion the TQ among domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF). The sum of the TQs specified must be within the OY range of 116,000 to 800,000 mt for target

species and the "other species" category.

(i) The annual determinations of the TQ for each target species and the "other species" category, the reapportionment of reserves, and the reapportionment of surplus DAH will be based upon the following:

(A) *Assessments of the biological condition of each target species and the "other species" category.* Assessments will include where practicable updated estimates of maximum sustainable yield (MSY), and acceptable biological catch (ABC); estimates of groundfish species mortality from nongroundfish fisheries, subsistence fisheries, recreational fisheries, and the difference between groundfish mortality and catch. Assessments may include information on historical catch trends and current catch statistics; assessments of alternative harvesting strategies and related effects on component species and species groups; relevant information relating to changes in groundfish markets; and recommendations for TQ by species or species group.

(B) Socioeconomic considerations that are consistent with the goals and objectives of the fishery management plan for groundfish in the Gulf of Alaska area.

(g) *Prohibited species catch limits.* (1) When the Secretary determines after consultation with the Council that the TQ for any species or species group will be fully harvested in the DAP fishery, the Secretary may specify for each calendar year the prohibited species catch (PSC) limit applicable to the JVP and TALFF fisheries for that species or species group. Any PSC limit specified under this paragraph will be provided as bycatch only, and may not exceed an amount determined to be that amount necessary to harvest target species. Species for which a PSC limit has been specified under this paragraph will be treated in the same manner as prohibited species under paragraph (d) of this section.

(2) The annual determinations of the PSC limit for each species or species group under paragraph (g)(1) of this section will be based upon the following:

(i) *Assessments of the biological condition of each PSC species.* Assessments will include where practicable updated estimates of maximum sustainable yield (MSY), and acceptable biological catch (ABC); estimates of groundfish species mortality from nongroundfish fisheries, subsistence fisheries, recreational fisheries, and the difference between groundfish mortality and catch. Assessments may include information on historical catch trends and current catch statistics; assessments of alternative harvesting strategies and related effects on component species and species groups; relevant information relating to changes in groundfish markets; and recommendations for PSC limits for species or species group fully utilized by the DAP fisheries;

(ii) Socioeconomic considerations that are consistent with the goals and objectives of the FMP.

(h) *Notices.* (1) *Notices of harvest limits and PSC limits.* As soon as practicable after October 1 of each year, the Secretary, after consultation with the Council, will publish a notice in the **Federal Register** specifying preliminary annual TQ, DAP, JVP, TALFF, reserves, and PSCs amounts for each target species, "other species" category, and species fully utilized by the DAP fisheries. The preliminary specifications of DAP and JVP will be the amounts harvested during the previous year plus any additional amounts the Secretary determines will be harvested in the DAP fishery. These additional amounts will reflect as accurately as possible the projected increases in U.S. processing and harvesting capacity and to the extent to which U.S. processing and harvesting will occur during the coming year. Public comment on these amounts will be accepted by the Secretary for a period of 30 days following publication. In light of comments received, the Secretary will, after consultation with the Council, specify the final PSC limits and annual TQ for each target species and apportionments thereof among DAP, JVP, TALFF, and reserves. These final amounts will be published as a notice in the **Federal Register** by January 1 of each year. These amounts will replace the corresponding amounts for the previous year.

(2) *Notices of closure.* (i) If the Regional Director determines that the TQ for any target species or of the "other species" category in any regulatory area or district in Table 1 of paragraph (f) of this section has been or will be reached, the Secretary will publish a notice in the **Federal Register** prohibiting directed fishing for that species in all or part of that area or district, and declaring such species in all or part of that area or district a prohibited species for purposes of paragraph (d) of this section. During the time that such notice is in effect, the operator of every vessel regulated by this part or 50 CFR Part 611 must minimize the catch of that species in the area or district, or portion thereof, to which the notice applies.

(ii) If, in making a determination under paragraph (g)(1) of this section, the Regional Director also determines that directed fishing for other groundfish species in the area or district, or portion thereof, to which the notice applies may lead to overfishing of the species for which the TQ has been or will be achieved, the Secretary may, in the notice required by that paragraph, also prohibit or limit such directed fishing for other groundfish species in a manner that will prevent overfishing of the species for which the TQ has been or will be taken.

(iii) If the Regional Director determines that a PSC limit applicable to a directed fishery in any regulatory area or district in Table 1 of paragraph (f) of this section has been or will be reached, the Secretary may publish a notice of closure in the **Federal Register** closing that directed fishery in all or part of the area or district concerned.

(i) *Apportionment of reserves, initial DAH, and adjustment of PSC limits.*— (1) *Apportionment of reserves.* (i) In accordance with paragraph (i)(4) of this section and as soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines necessary, the Secretary, after consultation with the Council, may reapportion to TALFF, part or all of the reserves specified in Table 1.

(ii) As soon as practicable after the first day of the following months, and on such other dates as he determines necessary, the Secretary may apportion to DAH, in accordance with paragraph (i)(3) of this section, any amounts of any reserve that he determines to be needed to supplement DAH: April, June, and August.

(2) *Apportionment of surplus DAH to TALFF.* In accordance with paragraph (i)(4) of this section and as soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines necessary, the Secretary, after consultation with the Council, may apportion to TALFF, any part of the DAH amounts that he determines will not be harvested by U.S. fishermen during the remainder of the year.

(3) *Allocation of increases or decreases in DAH among DAP and JVP.* The Secretary may allocate any increases or decreases in DAH amounts resulting from apportionments under paragraphs (i)(1)(i) and (i)(2) of this section among the DAP and JVP components of DAH.

(4) *Adjustment of PSC limits resulting from apportionments.* If the Secretary makes inseason apportionments of target species, the Secretary may proportionately increase any PSC limit amount of species fully utilized by the DAP fishery if such increase will not

result in overfishing of that species. Any adjusted PSC limit may not exceed the amount determined to be necessary to harvest a target species.

(5) *Standards and procedure for apportionment.*—(i) *General.* The Secretary may apportion to TALFF under paragraphs (i)(1) and (i)(2) of this section only those amounts which he determines will not be harvested by vessels of the United States during the remainder of the fishing year. The amount of reserve which the Regional Director determines will be harvested by vessels of the United States may, in the discretion of the Secretary, either be apportioned to the estimate of domestic annual harvest (DAH), or retained in the reserves as eligible for later apportionment under paragraph (i) of this section.

(ii) *Factors.* In determining whether or not amounts proposed to be apportioned under paragraphs (i)(1) and (i)(2) of this section will be harvested by vessels of the United States during the remainder of the fishing year, the Regional Director will consider the following factors, although he may not be limited to these factors:

(A) Reported U.S. catch and effort by species and area compared to previously projected U.S. harvesting capacity;

(B) Projected U.S. catch and effort by species and area for the remainder of the fishing year;

(C) Amounts of fish, particularly U.S. harvested fish, already purchased or processed by U.S. fish processors during the fishing year, compared to previously projected processing capacity of U.S. fish processors;

(D) Projected processing capacity, and utilization of that capacity for the processing of U.S. harvested fish, by U.S. fish processors for the remainder of the fishing year;

(E) Amounts of U.S. harvested fish already received or processed by foreign fishing vessels, compared to previously projected levels of such receipt or processing; and

(F) The need to maintain orderly fisheries despite any misspecifications of by-catch species amounts in mixed species fisheries.

(iii) *Allocation of increases and decreases in DAH between DAP and JVP.* The Secretary may allocate any increases or decreases in DAH amounts resulting from apportionments under paragraphs (i)(1) and (i)(2) of this section between DAP and JVP.

(iv) *Public comment.* (A) Comments may be submitted to the Regional Director concerning:

(*1*) Whether, and the extent to which, vessels of the U.S. will harvest reserve or DAH amounts during the remainder of the fishing year; and

(*2*) Whether, and the extent to which, U.S. harvested groundfish can or will be processed by U.S. fish processors or received at sea by foreign fishing vessels.

(*3*) Comments should be addressed to Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802, and must be received by the Regional Director no later than five (5) days before the relevant date specified in paragraph (i)(1) or (i)(2) of this section. When the Secretary determines that apportionment is required on dates other than those specified in paragraph (i)(1) of this section, he will publish a notice in the **Federal Register** on the proposed apportionment which will state the period during which comments may be submitted. If the Secretary finds it necessary to apportion additional amounts without affording a prior opportunity for public comment in order to prevent the premature closure of a fishery, public comments will be invited for a period of fifteen (15) days after the effective date of the apportionment. The Secretary will consider all timely comments in deciding whether to make a proposed apportionment or to modify an apportionment that has previously been made, and will publish responses to those comments in the **Federal Register** as soon as it is practicable.

(B) The Secretary will consider any timely comments submitted in accordance with this paragraph in determining whether, and to what extent, vessels of the U.S. will harvest reserve or DAH amounts during the remainder of the fishing year, and whether any part of such amounts will be allocated to TALFF under paragraphs (i)(1) and (i)(2) of this section.

(C) The Regional Director will compile, in aggregate form, the most recent available reports on

(*1*) The level of catch and effort by vessels of the United States fishing for groundfish in the Gulf of Alaska; and

(*2*) The amounts of U.S. harvested groundfish taken in the Gulf of Alaska and processed by U.S. fish processors or delivered at sea to foreign fishing vessels. These data will be available for public inspection during business hours (8:00 a.m.–4:30 p.m., Monday-Friday) at the National Marine Fisheries Service Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99801, during the last 25 days of each comment period.

(v) *Procedure.* As soon as practicable after each of the dates specified in, and each additional date selected under paragraph (i)(1) or (i)(2) of this section, the Secretary will publish in the **Federal Register**:

(A) Any reserve amounts to be apportioned to TALFF or DAH;

(B) Any DAH amounts to be apportioned to TALFF;

(C) The distribution of amounts apportioned to or from DAH among DAP and JVP;

(D) Any adjustments in PSC limit amounts made under this section;

(E) The reasons for any apportionments and their distribution; and

(F) Responses to any comments received.

(j) *Halibut.* (1) If, during any year, the Regional Director determines that the catch of halibut for that year by U.S. vessels delivering their catch to foreign vessels (JVP vessels) of U.S. vessels delivering their catch to U.S. fish processors (DAP vessels) will reach the applicable prohibited species catch (PSC) limit for halibut established under paragraph (j)(2) of this section, he will publish a notice in the **Federal Register** prohibiting fishing with trawl gear other than off-bottom trawl gear for the rest of the year by the vessels and in the area to which the PSC limit applies, subject to paragraph (j)(2)(iv) of this section.

(2)(i) As soon as practicable after October 1 of each year, the Secretary, after consultation with the Council, will publish a notice in the **Federal Register** specifying the proposed halibut PSC limits for JVP vessels and DAP vessels. Each halibut PSC may be apportioned among the regulatory areas and districts of the Gulf of Alaska. Public comments on the proposed halibut PSC limits will be accepted by the Secretary for 30 days after the notice is published in the **Federal Register**. The Secretary will consider all timely comments in determining, after consultation with the Council, the final halibut PSC limits for the next year. A notice of these final halibut PSC limits will be published in the **Federal Register**, as soon as practicable after December 15 and will also be made available to the public by the Regional Director through other suitable means.

(ii) The Secretary will base the annual halibut PSC limits upon the following types of information:

(A) Estimated halibut bycatch in prior years;

(B) Expected changes in groundfish catch;

(C) Expected changes in groundfish biomass;

(D) Current estimates of halibut biomass and stock condition;

(E) Potential impacts of expected fishing for groundfish on halibut stocks and U.S. halibut fisheries;

(F) The methods available for and costs for reducing halibut bycatches in groundfish fisheries; and

(G) Other biological and socioeconomic information that affects the consistency of halibut PSC limits with the objectives of this part.

(iii) The Secretary may, by notice in the Federal Register, change the halibut PSC limits during the year for which they were specified, based on new information of the types set forth in paragraph (j)(2)(ii) of this section.

(iv) When the JVP or DAP vessels to which a halibut PSC limit applies have caught an amount of halibut equal to that PSC, the Regional Director may, by notice in the **Federal Register**, allow some or all of those vessels to continue to fish for groundfish using bottom-trawl gear under specified conditions, subject to the other provisions of this part. In authorizing and conditioning such continued fishing with bottom-trawl gear, the Regional Director will take into account the following considerations, and issue relevant findings:

(A) The risk of biological harm to halibut stocks and of socioeconomic harm to authorized halibut users posed by continued bottom trawling by these vessels;

(B) The extent to which these vessels have avoided incidental halibut catches up to that point in the year;

(C) The confidence of the Regional Director in the accuracy of the estimates of incidental halibut catches by these vessels up to that point in the year;

(D) Whether observer coverage of these vessels is sufficient to assure adherence to the prescribed conditions and to alert the Regional Director to increases in their incidental halibut catches; and

(E) The enforcement record of owners and operators of these vessels, and the confidence of the Regional Director that adherence to the prescribed conditions can be assured in light of available enforcement resources.

8. In § 672.24, a new paragraph (c) is added to read as follows:

§ 672.24 Gear limitations.

* * * * *

(c) *Trawls other than pelagic trawls.* (1) No person may fish in any of the following areas in the vicinity of Kodiak Island (see Figure 1, Area Type I) from a vessel having any trawl other than a pelagic trawl either attached or on board:

(i) Alitak Flats and Towers Areas: All waters of Alitak Flats and the Towers Areas enclosed by a line connecting the following seven points (latitude/longitude) in the order listed:

	N. lat.	W. long.	
Point a	57°00.0	154°31.0	Low Cape.
Point b	57°00.0	155°00.0	
Point c	56°17.0	155°00.0	
Point d	56°17.0	153°52.0	
Point e	56°33.5	153°52.0	Cape Sitkinak.
Point f	56°54.5	153°32.0	East point of Twoheaded Island.
Point g	56°56.0	153°35.5	Kodiak Island.
Point a	57°00.0	154°31.0	Low Cape.

(ii) Marmot Flats Area: All waters enclosed by a line connecting the following five points in the clockwise order listed:

	N. lat.	W. long.	
Point a	58°00.0	152°27.0	
Point b	58°00.0	151°47.0	
Point c	57°37.0	151°47.0	
Point d	57°38.0	152°09.1	Cape Chiniak Light to North Cape.
Point e	57°58.0	152°27.0	
Point a	58°00.0	152°27.5	

(2) From February 15 to June 15, no person may fish in any of the following areas in the vicinity of Kodiak Island (see Figure 1, Area Type II) from a vessel having any trawl other than a pelagic trawl either attached or on board:

(i) *Chirikof Island Area:* All waters surrounding Chirikof Island enclosed by a line connecting the following four points in the counter clockwise order listed:

	N. lat.	W. long.
Point a	56°07.0	155°13.0
Point b	56°07.0	156°00.0
Point c	55°41.0	156°00.0
Point d	55°41.0	155°13.0
Point a	56°07.0	156°00.0

(ii) *Barnabas Area:* All waters enclosed by a line connecting the following five points in the counter clockwise order listed:

	N. lat.	W. long.	
Point a	56°58.5	153°18.0	Black Point.
Point b	56°56.0	153°09.0	
Point c	57°22.0	152°18.5	South Tip of Ugak Island.
Point d	57°23.5	152°17.5	North Tip of Ugak Island.
Point e	57°26.0	152°19.0	Narrow Cape to Black Point, incl. inshore waters.
Point a	56°58.5	153°18.0	

(3) Each person using a trawl to fish in any area limited to pelagic trawl under paragraphs (c)(1) and (c)(2) of this section must maintain in working order on that trawl a properly functioning, recording net-sonde device, and must retain all net-sonde recordings aboard the fishing vessel during the fishing year.

(4) No person using a trawl to fish in any area limited to pelagic trawl under paragraphs (c)(1) and (c)(2) of this section will allow the footrope of that trawl to be in contact with the seabed for more than 10 percent of the period of any tow, as indicated by the net-sonde device.

PART 675—[AMENDED]

9. The authority citation for Part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

10. In § 675.2, a new definition is added in proper alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *

Processing, or to *process,* means the preparation of fish to render it suitable for human consumption, industrial uses, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, freezing, and rendering into meal or oil, but does not means heading and gutting.

* * * * *

11. In § 675.5, from January 1, 1987, through March 31, 1987, paragraph (a)(3) is suspended and a new paragraph (a)(4) is added, to read as follows:

§ 675.5 Reporting requirements.

(a) * * *

(4) *Catcher/processor and mothership/processor vessels.* The operator of any fishing vessel regulated under this part who processes, within the meaning of process under § 675.2, any groundfish aboard that vessel must, in addition to the requirements of paragraphs (a)(1) and (a)(2) of this section, meet the following requirements:

(i) Prior to starting and upon stopping fishing or receiving groundfish in any area, the operator of that vessel must notify the Regional Director of the date and hour in GMT and the position of such activity.

(ii) When shifting operations to a new area, the operator of that vessel must notify the Regional Director of the date and hour in GMT of starting fishing or receiving groundfish in the new area and the position of the new fishing activity. The notice must be sent to the Regional Director within 24 hours of shifting.

(iii) The notices required in paragraphs (a)(4) (i) and (ii) of this section should be sent by private or commercial communications facilities to the U.S. Coast Guard at Juneau, Alaska,

who will relay them to the Regional Director. Only if adequate private or commercial communications facilities have not been successfully contacted may the required notices be delivered via the closest Coast Guard communications station.

(iv) After notification of starting fishing by a vessel under paragraph (a)(4)(i) of this section, and continuing until that vessel's entire catch or cargo of fish has been off-loaded, the operator of that vessel must submit a weekly catch or receipt report, including reports of zero tons caught or received, for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period. Catch or receipt reports must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under § 675.4 of this part. These reports must contain the following information:

(A) Name and radio call sign of vessel;

(B) Federal permit number for the Gulf of Alaska groundfish fisheries;

(C) Month and days fished or during which fish were received at sea;

(D) The estimated round weight of all fish caught or received at sea by species or species group, rounded to the nearest one-tenth of a metric ton (0.1 mt), whether retained, discarded, or offloaded;

(E) The area in which such species or species groups were caught; and

(F) If any species or species groups were caught in more than one area during a reporting period, the estimated round weight of each, to the nearest 0.1 mt, by area.

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Proposed Rules

Federal Register
Vol. 52, No. 3
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

Grapes Grown in a Designated Area of Southeastern California; Table Grapes Imported Into the United States: Proposed Change in Effective Dates for Domestic and Imported Table Grape Requirements for the 1987 Season and Each Season Thereafter

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish April 10 through August 15 as the effective period of the California desert grape and imported table grape regulations for the 1987 season and for subsequent seasons. Currently, the effective period for both domestic and imported table grapes is May 1 through August 15 of each year. The purpose of these changes is to assure that applicable quality requirements are in place during such time periods as needed to provide a consistent supply of grapes of acceptable quality to fresh market outlets. The change in the effective date applicable to domestic desert grapes was recommended by the California Desert Grape Administrative Committee, which works with the Department in administering the Federal marketing order for California desert grapes. The change applicable to grapes offered for importation is necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments due February 5, 1987.

ADDRESSES: Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085 South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447-5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Departmental Regulation 1512-1 and Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of the businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601-674), and rules promulgated thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 22 handlers of California desert grapes subject to regulation under the marketing order handling regulation. There are approximately 88 growers of desert grapes in the production area. Finally, there are approximately 50 importers of table grapes who will be subject to the table grape import regulations during the 1987 season. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers, producers, and importers of table grapes may be classified as small entities.

The Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this action on small entities. The regulatory action in this instance is a proposed rule which would establish an earlier effective date for the handling regulation applicable to California desert grapes. The handling regulation is applicable to table grapes grown in the production area and shipped to fresh market outlets. Pursuant to section 8e of the Act, when such a regulation is in effect for domestic shipments, imports are required to meet the same or comparable requirements.

The California desert grape regulation is effective on a continuous basis under the marketing agreement and Order No. 925 (7 CFR Part 925), regulating the handling of table grapes grown in a designated area of southeastern California. Effective on a continuous basis means that the requirements continue in effect during the period specified from marketing season to marketing season indefinitely unless changed. This gives the domestic shippers and importers a better opportunity to integrate the program requirements into their business operations by facilitating advance planning. It also saves the government money because the regulations do not have to be republished each season unless a change is necessary to reflect unusual crop or marketing conditions. The marketing agreement and order are effective under the Act. The California Desert Grape Administrative Committee, established under the order, locally administers the marketing order program.

Grapes grown in the production area are marketed in the major market areas of the United States. Shipments of California desert grapes totaled 8,189,994 million lugs (22 pound equivalent) in 1986. This compared to 7,491,364 million lugs in 1985 and the three year (1983-1985) average of 6,899,377 million lugs. Since 1982 bearing acreage of California desert grapes has increased moderately. Bearing acreage was reported at 18,073 acres in 1986, slightly more than the 15,994 acres in 1985.

The increase in the level of fresh shipments in recent years is primarily attributed to improved production and packaging practices, improved product quality, and increased per acre yields. There are about 807 non-bearing acres of desert grapes which are expected to be productive within the next several years. Hence, production of desert grapes is expected to increase moderately in the near future. The three major varieties of desert grapes are Perlette, Thompson Seedless, and Flame Seedless. These three varieties

accounted for about 92 percent of the shipments in 1986.

For 1986, the production area accounted for about 12 percent of total California fresh shipments. However, during the period May to July, fresh shipments from this area constituted about 65 percent of the early season U.S. supply of fresh grapes. Hence, these shipments help set the market tone for the rest of California's fresh table grape shipments. For the last three years, initial shipments of grapes from the production area began in late April or early May. Normally, prices for grapes are relatively high at the beginning of the season, but decline rapidly as the season progresses.

The desert grape industry has utilized the marketing order authority to assure buyers of a consistent supply of uniformly graded and packed good quality grapes. This has helped the industry achieve the wide distribution necessary to dispose of the crop at reasonable returns to growers.

In view of the prospective increase in production which will have to be absorbed by the market, it is important that demand not be adversely affected by the marketing of poor quality grapes. Shipments of such grapes tend to depress prices, demoralize the market, and reduce grower returns. The quality requirements established under the program have been used to assure the consumer that the grapes offered in the marketplace are of satisfactory quality. The marketing of grapes of low quality—lacking in flavor, small size, and off-color—would tend to destroy the reputation of the fruit with consumers, wholesalers, retailers, and others at all levels in the marketing channel.

Chile is the leading exporter of grapes to the United States. Thompson Seedless, Perlettes, and Flame Seedless are the important varieties exported. The volume of imports from Chile has been increasing. Last season, a record setting 22 to 23 million 18 pound boxes of Chilean grapes arrived in the United States. Shipments from Chile over the last 10 years have captured about 27 percent of the U.S. market. A recent study by Dr. Paul Aldunate Valdes, professor of Agricultural Economics at the Pontifical Chilean Catholic University, highlights the explosive growth of new grape plantings in Chile.

The large increase of Chilean table grape marketings in recent years and expected increases in future years have created and are expected to create additional marketing problems for the California desert grape industry. According to the committee, the major marketing problem is created from table grapes imported in March and April when they are not inspected according to grade, size, and maturity requirements, but are marketed in May and June when the desert table grapes are harvested and are required to meet Federal marketing order requirements. The domestic industry contends that low quality imports are marketed during this period and that this adversely affects grape sales, and injures domestic and foreign grape growers who market table grapes that do comply with the Federal marketing order and import grade, size, and maturity requirements.

The California and import table grape regulations require table grapes to meet the minimum grade and size requirements of U.S. No. 1 Table grade as specified in the United States Standards for Grades of Table Grapes (European or Vinifera Types), 7 CFR Part 51.880 through 51.912, except that grapes of the Flame Seedless variety are required to meet the "other varieties" standard for berry size (ten-sixteenths of an inch). In addition, fresh table grapes (domestic and imported) are required to meet the minimum maturity requirements for table grapes as specified in the California Administrative Code, except that grapes of the Flame Seedless variety shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice. Grapes of the Emperor, Calmeria, Almeria, and Ribier varieties are exempt from domestic and import handling requirements because they are not grown in the desert area of California.

This proposed rule only involves earlier implementation dates for the desert grape and import requirements. The grade, size, and maturity requirements are the same as last season. According to the committee, an earlier effective date for domestic grapes is necessary to assure buyers of a consistent supply of uniformly graded and packed good quality grapes.

While the proposed regulation would establish earlier effective dates for domestic and imported table grape regulations, total exemptions from requirements under the domestic handling regulation remain unchanged for shipments of the Emperor, Calmeria, Almeria, and Ribier grape varieties. Imports of these varieties of grapes also are exempt from import regulation requirements (§ 944.503, Table Grape Import Regulation 4; 51 FR 12498; April 9, 1986).

Limited exemptions are provided for organically grown grapes and grape by-products under the marketing order. The exemptions are specified in § 925.304(c) and (d) (51 FR 12498; April 9, 1986). Organically grown grapes (defined to mean grapes which have been grown for market as natural grapes by performing all the natural cultural practices, but not using any inorganic fertilizers or agricultural chemicals including insecticides, herbicides, and growth regulators, except sulphur) need not meet the minimum individual berry size requirements if certain conditions and safeguards are met: (1) The handler of such grapes has registered and certified with the committee on a date specified by the committee, the location of the vineyard, the acreage and variety of grapes, and such other information as may be needed by the committee to carry out these provisions; (2) each container of organically grown grapes bears the words "organically grown" on one outside end of the container in plain letters in addition to requirements specified under paragraph (b)(3) of the handling regulation.

The handling of grapes for processing (raisins, crushing, and other by-products) is exempt from requirements specified in paragraphs (a), (b), and (c) of § 925.304 if the committee determines that the person handling such grapes has secured the appropriate permit or order form from the County Agricultural Commissioner, and the by-product plant or packing plant to which the grapes are shipped has adequate facilities for commercial processing, grading, packing, or manufacturing of by-products for resale.

It is the Department's view that the impact of the proposed regulation upon the growers, handlers, and importers would not be adverse. Although the information currently available to AMS is limited in some respects, the known costs to handlers, growers, and importers of earlier implementation of the regulations appear to be significantly offset when compared to potential benefits of the regulation in improving table grape quality in the marketplace. Shipments of low quality grapes to the fresh market depress prices and discourage repeat purchases from consumers. Implementing this regulation would also prevent low quality grapes from entering fresh market channels during the regulation period, provide stable marketing conditions, improve returns to producers, and promote consumer satisfaction.

The California Desert Grape Administrative Committee met November 20, 1986, to recommend to the Secretary its marketing policy for 1987 and the seasonal marketing regulations for the 1987 season. This was done

pursuant to § 925.50. That section requires the committee each season prior to making any recommendation for regulation pursuant to § 925.51 to submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report is required to contain information relative to:

(a) The estimated total shipments of grapes produced within the production area;

(b) The expected general quality of the grapes in the production area;

(c) The expected demand conditions for grapes;

(d) The probable prices for grapes;

(e) Surpluses of competing commodities, including foreign produced grapes;

(f) Trend and level of consumer income;

(g) Other factors having a bearing on the marketing of grapes; and

(h) The type of regulations expected to be recommended during the marketing season.

At the meeting, these issues as well as the effective date for the minimum quality requirements and the problem with non-regulated grapes being imported prior to the effective date of the import quality requirements were discussed. The committee was concerned that effective date changes made last season for domestic grapes and the corresponding changes required in the import regulation pursuant to section 8e of the Act caused marketing problems for foreign growers. In 1986, the domestic regulation initially went into effect on April 15 and the import regulation was effective April 15 for all imports except for those arriving by ocean transport for which the effective date was April 19. The dates were subsequently delayed because the domestic shipping season started later than expected. The new domestic effective date was April 22 and that for the import regulation was April 26. The committee believes that a fixed permanent date allowing for an early desert grape harvest would be in the best interests of the domestic and foreign growers. The committee received information from Mr. Frederick L. Jansen, Extension Viticulturist, University of California, attesting to the impossibility of accurately predicting a harvest date for the California desert grape crop in January or earlier.

Because of this, the committee recommended that the 1987 domestic seasonal regulations for table grapes become effective on April 10, 1987, and each season thereafter rather than May 1 as currently provided in the continuing regulation issued April 15, 1986 (51 FR 13208). The current May 1 effective date of the handling regulation was previously thought to coincide with the approximate beginning date of shipments of desert grapes each year. However, since it was adopted grapes matured and were shipped earlier at least one season suggesting that the May 1 date is actually too late in the marketing season to cover early grapes every season. The earlier effective date recommended by the committee recognizes the industry's concern about shipment of immature grapes early in the season and is expected to be early enough to be in place by the start of shipping during even an early season.

Early season grape shipments command premium prices. Hence, there is a strong incentive to ship grapes before they are ready for market. Shipments of immature grapes result in consumer dissatisfaction and lower returns to producers. The committee believes that an earlier effective date would deter shipments of immature grapes out of the production area from entering fresh market channels before they have developed full flavor.

Regulation of imports of table grapes is required pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937 whenever such imports are in competition with grapes subject to marketing order regulation. The proposal would make the 1987 import regulation effective April 10, 1987, and on April 10 of each year thereafter. The proposed April 10 effective date is earlier than last year's April 26 effective date for the table grape import requirements.

Tying the effective date of the grape import regulation to the effective date of the related marketing order seasonal regulation is consistent with section 8e.

Although the regulations would be effective at certain times each season, indefinitely, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee would submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the California desert grape crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate committee recommendations and information submitted by the committee, and other available information and determine whether changes in the regulations for desert grapes and imported table grapes would tend to effectuate the declared policy of the Act.

A 30-day comment period is allowed to receive written comments either supporting or opposing this proposal. All written comments timely received in response to this request for comments will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 925

Marketing agreements and orders, Grapes, California, Incorporation by reference.

7 CFR Part 944

Fruits, Import regulations, Grapes, Incorporation by reference.

PARTS 925 AND 944—[AMENDED]

1. The authority citation for 7 CFR Parts 925 and 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 925.304 is proposed to be amended by revising the introductory text to read as follows:

§ 925.304 California Desert Grape Regulation 6.

During the period April 10 through August 15, 1987, and April 10 through August 15 each year thereafter, no person shall pack or repack any variety of grapes except Emperor, Calmeria, Almeria, and Ribier varieties, on any Saturday or Sunday, or on the Memorial Day or Independence Day holidays of each year, unless approved in accordance with paragraph (e) of this section nor handle any variety of grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, unless such grapes meet the following requirements.

* * * * *

Section 944.503 is proposed to be amended by revising paragraph (a)(3) to read as follows:

§ 944.503 Table Grape Import Regulation 4.

(a) * * *

(3) All regulated varieties of grapes offered for importation shall be subject to the grape import requirements effective April 10 through August 15, 1987, and April 10 through August 15 of each year thereafter.

* * * * *

Dated: December 29, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-172 Filed 1-5-87; 8:45 am]

BILLING CODE 3410-02

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-67-AD]

Airworthiness Directives; Cessna Models 140A, 150 Through 150M, A150K Through A150M, 170 Through 170B, 172 Through 172H, 180 Through 180K, 182 Through 182R, 188 Through 188B, F150F Through F150M, FA150K Through FA150L, F172D Through F172K, F182(P), F182(Q) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Cessna Model 140, 150, A150, 170, 172, 180, 182, 188, F150, FA150, F172, and F182 airplanes. This AD would require modification of the airplanes by installing springs on carburetor throttle shafts to cause the throttle to open when the airplane throttle control separates from the carburetor. Reports have been received of forced landings caused by engine power loss due to separation of the airplane throttle control attachment at the carburetor. The proposed action will help preclude engine power loss in the event of separation of the engine throttle control attachment.

DATES: Comments must be received on or before January 22, 1987.

ADDRESSES: Documents applicable to this AD may be obtained from the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-67-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, Aircraft Certification Office, ACE-140W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-67-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

As a result of a recent accident, the National Transportation Safety Board (NTSB) issued a safety recommendation which included the 2 requirements for installation of carburetor throttle opening springs on all Cessna single engine airplanes not presently so equipped. The FAA has received several additional reports of accidents and incidents of engine power loss and forced landings involving certain Cessna 140, 150, A150, 170, 172, 180, 182, 188, F150, FA150, F172, and F182 Series airplanes. The engine power loss is considered to have occurred because the engine throttle control became disconnected from the carburetor arm. Subsequently, the control arm vibrates to the low power (idle) position. The carburetor manufacturer has springs available that will help preclude vibration of the control arm to the low power (idle) position in this situation. The FAA has determined that the springs are necessary to correct an unsafe condition and that an AD is needed. Thus, the FAA proposes an AD requiring modification of the engine carburetor on certain Continental powered Cessna single engine airplanes.

Since the condition described above is likely to exist or develop in other certain Cessna 140, 150, A150, 170, 172, 180, 182, 188, F150, FA150, F172, and F182 Series airplanes of the same design, the AD would require modification of the engine carburetor by installation of a throttle opening spring on those airplanes not presently so equipped. The FAA has determined there are approximately 50,000 airplanes affected by the proposed AD. The cost of modifying these airplanes as required by the proposed AD is presently estimated to be $60.00 per airplane. The total cost is estimated to be $3,000,000 to the private sector.

The cost is so small that compliance with the proposal will not have a significant financial impact on any small entities owning affected airplanes. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if 3 promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air Transportation, Aviation Safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

CESSNA: Applies to the following model and serial number single engine Cessna airplanes certificated in any category, if equipped with MARVEL-SCHEBLER or FACET carburetors 10-3965-12, 10-4115-1, 10-4439, 10-4893, 10-4893-1, 10-4894, 10-4895, 10-5067, 10-5082, 10-5128, 10-5192, 10-5284.

Note: Some carburetor numbers may be prefixed with an "A".

Models	Serial Numbers
140A, 150	S/N 15200 thru 15724 S/N 617, 17001 thru 17999 S/N 59001 thru 59018
150A thru 150M	S/N 628, 15059019 thru 15079405
A150K thru A150M.	S/N A1500001 thru A1500734
170 thru 170B	S/N 18000 thru 27169.
172, 172A	S/N 28000 thru 47746
172B thru 172H	S/N 17247747 thru 17256512
180, 180A, thru 180C.	S/N 604, 614, 624, 30000 thru 32999, 50000 thru 50911
180D thru 180K	S/N 18050912 thru 18053203
182 thru 182C	S/N 33000 thru 34999, 51001 thru 53007
182D thru 182R	S/N 18253008 and on
188, 188A, 188B	S/N 653, 188-0001 thru 188-0572
188A, 188B	S/N 18800573 thru 18802348
F150F thru F150M	S/N F150-0001 thru F150-0529 S/N F15000530 thru F15001428
FA150K, FA150L	S/N FA1500001 thru FA1500120
F172D thru F172H	S/N F172-0001 thru F172-0654
F172H and F172K	S/N F17200655 thru F17200804
F182(P), F182(Q)	S/N F18200001 thru F18200169

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD unless already accomplished.

To help preclude engine power loss in the event of separation of the engine throttle control from the carburetor, accomplish the following:

(a) Modify the engine carburetor by installing a throttle opening spring in accordance with Figure I, of this AD.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

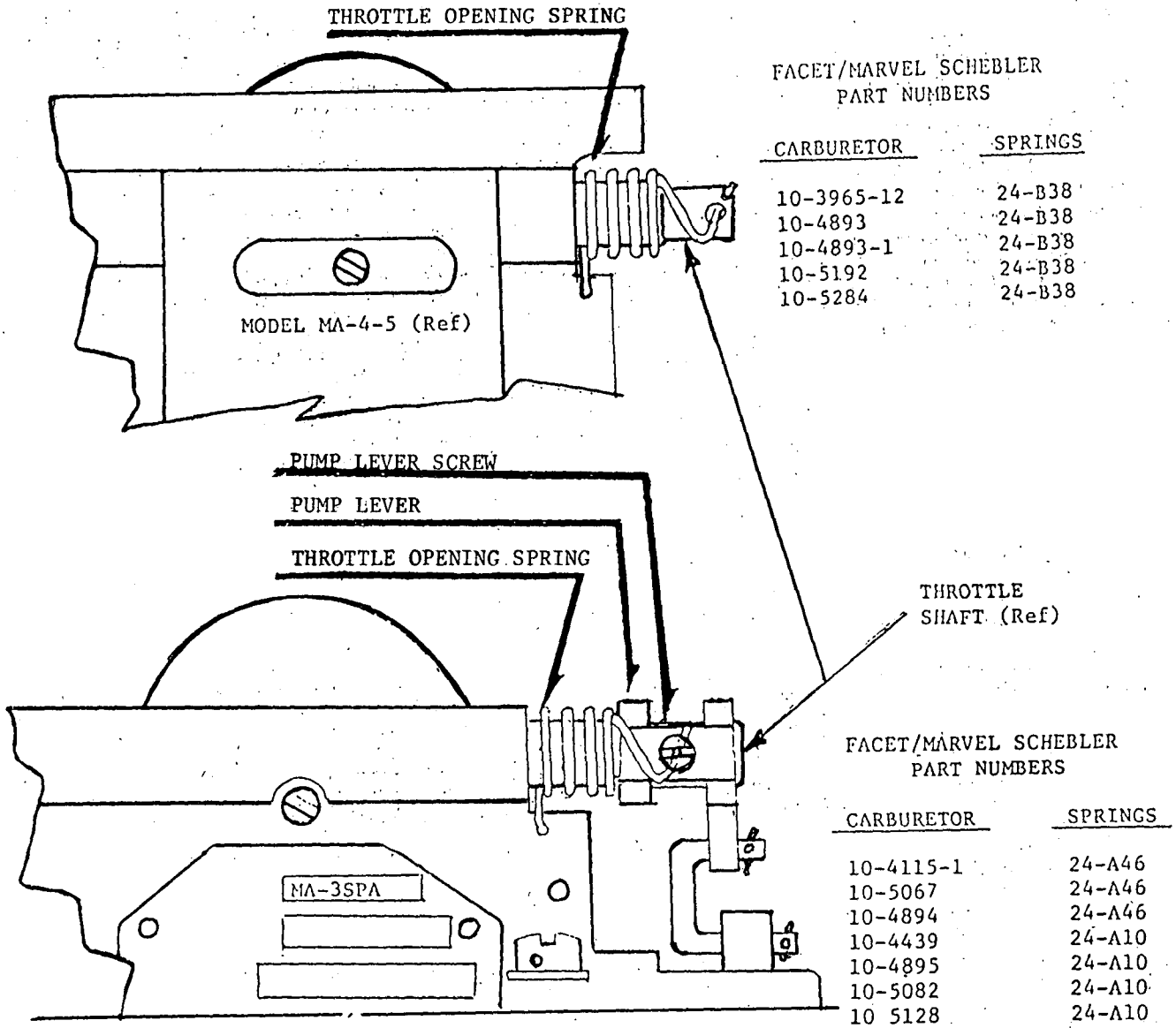
(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

Issued in Kansas City, Missouri, on December 8, 1986.

Edwin S. Harris,

Director, Central Region.

BILLING CODE 4910-13-M



FACET/MARVEL SCHEBLER PART NUMBERS

CARBURETOR	SPRINGS
10-3965-12	24-B38
10-4893	24-B38
10-4893-1	24-B38
10-5192	24-B38
10-5284	24-B38

FACET/MARVEL SCHEBLER PART NUMBERS

CARBURETOR	SPRINGS
10-4115-1	24-A46
10-5067	24-A46
10-4894	24-A46
10-4439	24-A10
10-4895	24-A10
10-5082	24-A10
10 5128	24-A10

NOTE: FACET/MARVEL SCHEBLER Aircraft Carburetor Service Manual may be used for assembly procedures if a Carburetor Service Bulletin is not available.

FIGURE I

[FR Doc. 87-180 Filed 1-5-87; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-65-86]

Allocation and Apportionment of Partnership Expenses; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to the allocation and apportionment of partnership expenses for purposes of determining taxable income from specific sources or activities that appeared in the Federal Register on May 29, 1984 (49 FR 22344).

FOR FURTHER INFORMATION CONTACT: Marine Carro of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (INTL-65-86), 202-566-3499, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document withdraws the notice of proposed rulemaking under sections 861 and 862 that appeared in the Federal Register on May 29, 1984 (49 FR 22344).

The proposed regulations are being withdrawn because of substantial changes made to the rules for allocation and apportionment of deductions made by section 1215(a) of the Tax Reform Act of 1986 which has necessitated further study of the issue considered in the notice in light of these changes. Section 1215(a) adds paragraph (e) to section 864 and states that, except as provided in regulations, interest expense and other expenses are to be allocated and apportioned as if all members of an affiliated group were a single corporation.

Drafting Information

The principal author of this document is Marnie Carro of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document both in matters of substance and style.

Withdrawal of Proposed Amendments

The proposed amendments to 26 CFR Part 1 relating to the allocation and apportionment of partnership expenses under sections 861 and 862 of the Internal Revenue Code of 1986 and published in the Federal Register on May 29, 1984 (49 FR 22344) are hereby withdrawn.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-143 Filed 1-5-87; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[OW-4-FRL-3136-8]

Ocean Dumping; Proposed Site Designation

AGENCY: Environmental Protection Agency (ERA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a new dredged material disposal site in the Atlantic Ocean offshore Fernandina Beach, Florida, as an EPA-approved ocean dumping site for the dumping of dredged material. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of dredge material.

DATE: Comments must be received on or before February 5, 1987.

ADDRESSES: Send comments to: Sally Turner, Chief Marine Protection Section, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365.

The file supporting this proposed site designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC 20460

EPA Region IV, 345 Courtland Street, NE., Atlanta, GA 30365

FOR FURTHER INFORMATION CONTACT: Reginald G. Rogers, 404/347-2126.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This proposed designation of a site offshore Fernandina Beach, Florida is within Region IV and is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under the Act (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977, (42 FR 2461 *et seq.*), and was extended on August 19, 1985, (50 FR 33338). The list established the existing Fernandina site as an interim site and extended its period of use until December 31, 1988. Interested persons may participate in this proposed rulemaking by submitting written comments within 30 days of the date of this publication to the address given above.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., "NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

The object of NEPA is to build into Agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this [See 39 FR 16186 (May 7, 1974)].

The Corps of Engineers and EPA have prepared a draft and final EIS entitled, *Supplement to the Jacksonville Harbor Ocean Dredge Material Disposal Site—Final Environmental Impact Statement for the Designation of a New Fernandina Harbor, Florida Ocean Dredged Material Disposal Site.* This EIS is a supplement to the Jacksonville Ocean Disposal Site Designation EIS as it lies within the same geographical region and the environmental conditions of the two sites are similar.

The action discussed in this Supplemental EIS (SEIS) is the final designation for continuing use of an ocean dredged material disposal site near Fernandina Beach, FL. The purpose of the proposed action is to provide an environmentally acceptable location for ocean disposal. The need for ocean disposal is determined on a case-by-

case as part of the process of issuing permits for ocean disposal.

On Friday, July 25, 1986, a notice of availability of the draft SEIS for public review and comment was published in the **Federal Register** Page No. [FR Vol. 51, No. 143 EIS 860292]. The public comment period on the draft EIS closed on September 8, 1986. Seven comment letters were received on the draft SEIS and have been addressed in the final SEIS. On Friday November 14, 1986, the notice of availability of the final SEIS was published in the **Federal Register** [51 FR 41415 (November 14, 1986)]. The comment period on the final SEIS closed December 15, 1986. Anyone desiring a copy of the SEIS may obtain one from the address above. Three comment letters were received on the final SEIS. Two of those letters supported the site designation as presented in the final SEIS. The State of Florida responded by letter of December 17, 1986, and did not object to the site designation as presented in the final SEIS. However, the State expressed its continuing concern regarding (1) the need to examine the position of discharged material immediately after disposal operations to insure that neither offsite transport nor mound movement would occur, (2) the use of photography as a monitoring tool for the site, and (3) measures taken to ensure adequate protection of the endangered right whale. As stated in Comment Responses 5–4 at page 56 of the final SEIS, EPA believes that post-disposal monitoring is the most appropriate method for determining the precise extent of any mounding or dispersion. This Agency will continue to attempt the use of underwater photography, previously made impossible by turbidity, in assessing actual and/or potential impacts from disposal. Concerns about the right whale are discussed below in Section D, Endangered Species Coordination.

The SEIS discusses the need for this site designation and examines ocean disposal site alternatives to the proposed action. The SEIS evaluated mid-shelf and shelf-break alternative sites using the general criteria and specific factors contained in the Ocean Dumping Regulations, 40 CFR, Part 228. Dredged material disposal has not occurred previously at the mid-shelf or shelf-break alternative site locations. There are significant dissimilarities between the physical and chemical characteristics of the dredged material sediments and sediments covering the mid-shelf or shelf-break regions. Altering the sediment texture and composition through the addition of finer sediments may have a long-term adverse impact on the benthic infauna at the mid-shelf and shelf-break sites. Fishery resources are localized over the mid-shelf and shelf-break regions, especially in the vicinity of hard bottom areas and shelf-break areas. These hard bottom areas are unique habitats, support several species of commercially and recreationally important finfish, and are sensitive to the effects of dredged material disposal. Also the continental shelf in this area is so wide that any site chosen beyond the shelf-break would be beyond economical distances for transporting materials. In addition, several proposed or active Minerals Management Service oil and gas lease sites exist in the mid-shelf and shelf-break regions. The SEIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation for continuing use and is based on one of a series of disposal site environmental studies.

C. Coastal Zone Management Coordination

The State of Florida has reviewed and concurred with the coastal zone consistency evaluation submitted by EPA with the conclusion that this site designation is consistent with Florida's Coastal Zone Management Plan.

D. Endangered Species Coordination

Pursuant to section 7 of the Endangered Species Act, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service were asked to concur with EPA's conclusion that this site designation will not affect the endangered species under their jurisdictions. By letter of September 5, 1986, the U.S. Fish and Wildlife Service did concur with the conclusion that this site designation will have no effect on federally listed threatened or endangered species under the Fish and Wildlife Service jurisdiction. The National Marine Fisheries Service responded by letter of September 29, 1986, indicating that it would concur with the site designation if measures were taken to ensure that the action would not adversely affect the behavior of the right whale which uses the Georgia and Northern Florida Atlantic coast waters as calving/wintering grounds.

After informal consultation, NMFS and EPA have decided that the concerns for the right whale can be addressed on a project-by-project basis. An evaluation of each project proposing to use the site will be made to determine what measures, if any, must be taken to ensure that disposal operations do not adversely affect the behavior of the right whale. This evaluation will be a part of the environmental review process required for EPA's approval to use the site under Part 227 of the Ocean Dumping Regulations and will consider, among other things, the known effects on the right whale during any previous disposal operations at the site, and any existing information concerning the behavior or migration patterns of the species. The first disposal operation proposed at the site is the disposal of dredged material from the U.S. Navy's St. Marys entrance channel expansion project. The Navy has agreed to incorporate a NMFS-approved whale observer program for the disposal operations connected with the project. Subsequent disposal projects at the site will be evaluated on a case-by-case basis as described above. A determination will be made by MNFS and EPA as to whether or not any restrictions or conditions are to be applied to that project. If an agreement cannot be reached on appropriate restrictions or conditions, formal section 7 consultation will be initiated for that disposal project.

E. Proposed Site Designation

The proposed site is located approximately six nautical miles offshore Amelia Island, Florida and occupies an area of about 4 square nautical miles. Water depths within the area average 16 meters. The coordinates of the site are as follows:

30°33'00" N; 81°16'52" W.
30°31'00" N; 81°16'52" W.
30°31'00" N; 81°19'08" W.
30°33'00" N; 81°19'08" W.

The site is square, approximately 2 nautical miles on each side.

F. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR Part 228, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated. The proposed site conforms to the five general criteria, except for the preference for sites

located off the Continental Shelf. EPA has determined, based on the information presented in the EIS, that no environmental benefit would be obtained by selecting a site off the Continental Shelf instead of that proposed in this action.

The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists 11 specific factors used in evaluating a proposed disposal site to assure that the general criteria are met. EPA established these 11 factors to constitute an environental assessment of the impact of disposal at the site. The criteria are used to make comparisons between the alternatives sites and form the basis for final site selection. The characteristics of the proposed site are reviewed below in terms of these 11 factors.

1. *Geographical position, depth of water, bottom topography, and distance from coast [40 CFR 228.6(a)(a1)].*

The boundary coordinates of the site are given above. The proposed site is located about 10 nautical miles (nmi) southeast of the St. Marys River mouth and about 6 nmi east of the Nassau River mouth. The nearest landfall is the south end of Amelia Island, 6 nmi to the west of the site. The area of the proposed site is approximately four square nmi. Water depths within the site range from 14 to 19 meters. The continental shelf in the site vicinity is relatively smooth with little or no slope. The bottom sediments in the area consist of fine sands with occasional small patches of medium sands.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases [40 CFR 228.6(a)(2)].*

Area fish and shellfish species spend their adult lives in the offshore region but many are estuary dependent in that their juveniles utilize low salinity estuarine nursery regions. Specific migration routes, from offshore areas to the estuaries and return are not well studied in the Fernandina area. However, the proposed site is located at least six nautical miles from the mouth of the nearest estuary (Nassau River), and therefore, should not encumber migratory passage in the area. Currents in the disposal site area are primarily wind-driven. Flow is to the north from early spring to summer, but to the south for the remainder of the year. The net transport is to the south so that it is unlikely that suspended sediments from disposal operations will be transported shoreward and accumulated in sufficient quantities to affect the estuarine breeding, spawning, and nursery areas.

3. *Location in relation to beaches and other amenity areas [40 CFR 228.6(a)(3)].*

Based on the location of the disposal site and the dominant current patterns, it is unlikely that disposal will significantly affect recreational uses of the surrounding amenity areas. The proposed site is six nautical miles east of the nearest beach and shore-related amenity. Amenity areas include Cumberland Island National Seashore, Fort Clinch State Park, and Aquatic Preserve, Nassau River-St. Johns River Marshes Aquatic Preserve, Little Talbot Island State Park, Kingsley Plantation Historic Monument, and Fort Caroline National Memorial. The proposed site should not significantly interfere with fishing activities in the areas as it is at least two nautical miles from all known fish havens, artifical reefs and hard banks. It is expected that the majority of the material will be coarse-grained and should sink rapidly within the site. Thus, these amenities are located far enough away so that impacts due to disposal operations are unlikely.

4. *Types quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any [40 CFR 228(a)(4)].*

Any material to be dumped at the proposed site will most likely result from new and maintenance dredging projects in the Fernandina area. Approximately 5.1 million cubic yards of new material will be generated by proposed projects. This material consists of undertermined amounts of rock, sand, silt, and clay from the entrance channel. Initial grain size analyses of these sediments indicate that the material is predominantly sand or coarser material. Results of chemical analyses of these sediments and their coarse grain sizes indicate that further testing with bioassays is not necessary. An undetermined amount of future maintenance dredged material is also proposed to be dumped at the site. It is expected that this material will be predominantly sand. If material from other areas is proposed for dumping at the site, the testing procedures given in the Ocean Dumping Regulations must be followed. Dredged material may not be approved for ocean dumping unless it meets the criteria given in 40 CFR Part 227. The hopper dredge and/or scows or barges are the types of vehicles proposed for dredging, transport and disposal of the dredged material.

5. *Feasibility of surveillance and monitoring [40 CFR 228.6(a)(5)].*

Since the proposed site is a new site and has not yet been used, the U.S. Coast Guard is not currently conducting surveillance at the site; however, due to the proximity of the site to shore, surveillance would not be difficult. Either day-use boats or aircraft overflights could be used for surveillance.

Periodic environmental monitoring will commence upon site designation and will continue as long as the site is used. A specific monitoring plan for the site has not yet been developed. General monitoring objectives for the site would include bathymetric measurements to identify shoaling or mounding areas. If movement of the material appears likely to impact a known resource, analysis of that resource would be undertaken. Specific monitoring objectives will be based on the use of the site. Periodic testing of the dredged material will also help ensure that the material will not adversely affect the marine biota in the vacinity of the site.

6. *Dispersal, horizontal transport and vertical mixing charactistics of the area including prevailing current direction and velocity, if any [40 CFR 228.6(a)(6)].*

Currents in the proposed site vicinity are mainly wind-driven. The Gulf Stream is about 90 miles to the east and has little direct influence on current velocities and directions at the site. Tidal and river discharge camponents have minimal influence on currents at the site due to its distance from shore. Net movement by tidal currents is northerly at approximately 0.02 nmi/h. Water flow in the site vicinity is to the north from early spring to summer, but to the south for the remainder of the year. Net current flow is to the south. Normal current speeds in the area range from 0.1 to 0.2 min/h.

It is unlikely that dispersion of disposed sediments at the proposed site will significantly impact amenity areas due to their distance from the site, the southerly net current flow and the fact that the majority of the disposed sediments is expected to settle rapidly within the site boundaries.

7. *Existence and effects of current and previous discharges and dumping in the area (including commulative effects) [40 CFR 228.6(a)(7].*

There have been no previous discharges at the proposed site. Nearby active disposal sites include the Jacksonville Harbor dredged material disposal site and the interim Fernandina dredged material disposal site. Disposal in these areas has produced only minor reversible effects such as: temporary increases in above ambient suspended sediment concentrations, temporary localized mounding, smothering of same benthic organisms, and possible

releases of other trace constituents into the overlying waters.

Field surveys at the site indicate that the area of the proposed site at times becames turbid due to riverine inputs. The long-term changes in suspended sediment concentrations due to dredged material disposal are insignificant in comparison to these natural sediment inputs from the Nassau, St. Marys and St. Johns rivers. The localized mounding is only a short-term effect as currents and wave action will likely disperse the sediments throughout the site.

Smothering of benthic organisms will most likely be restricted to sediment dwellers such as tube-dwelling polychaete worms and various species of amphipod crustaceans. The physical similarity between dredged material and the natural sediments will minimize adverse impacts on the benthos resulting from the overlaying of dissimilar sediments. In addition, the ability of these organisms to recolonize the similar sediments further reduces the likelihood of any long-term impact.

Grain size analyses, chemical characterization, bioassay and bioaccumulation tests of the dredged material will be performed as needed to ensure that releases of trace constituents during dumping are neither directly toxic to marine organisms or accumulated in tissues.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture areas of special scientific importance and other legitimate uses of the ocean [40 CFR 228.6(a)(8)].*

The proposed site is not located in any major shipping lane. The nearest anchorage is north of the St. Johns River, approximately three nmi from the proposed site. Intermittent use of the site should not impede commercial shipping or aggravate congestion within the shipping channels.

There are numerous commercial and recreational fishing areas located off the Florida coast between Jacksonville and Fernandina Beach. However, the proposed site is at least two nmi from all known fish havens, artificial reefs, and hard banks. Commercially important species such as red and black drum, sea trout, king fish, spot croaker, shrimp, and crab occur in the open-shelf habitat of the area, but none of the fisheries are limited to the site vicinity.

No resource development such as mineral extraction, desalination, or fish and shellfish culture is known to exist in the region. A short pipeline extends seaward from the north end of Amelia Island and a telecommunication cable extends seaward approximately three nautical miles south of the St. Johns River mouth. The proposed site is approximately six nmi from the pipeline and 113 nmi from the cable. The use of the proposed site should not interfere with these uses of the ocean.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment of baseline surveys [40 CFR 228.6(a)(9)].*

Investigations of the proposed disposal site by Continental Shelf Associates, Inc. (CSA) in 1985, used in developing the site designation EIS, have indicated that the water quality at the site is influenced by riverine inputs and that the ecology of the site is typical of the coastal habitat in the Georgia Bight.

Influence of coastal rivers can be seen by the presence of the turbid waters and a salinity of less than 36 ppt. Other water quality parameters (mercury, cadmium, lead, high molecular weight hydrocarbons, pesticides, PCB's) were all below the limits of detection. Dissolved oxygen concentrations ranged from 5.4 to 7.1 ppm throughout the water column. This level of oxygen is adequate to maintain aquatic life.

Bottom sediments at the proposed site are fine sands with occasional patches of medium sands. Trace metals, high molecular weight hydrocarbons, PCB's and pesticides were predominantly below detection limits during the CSA study.

The benthic infaunal community is characteristic of that described as "Coastal Habitat" by Struhsaker (1969). The CSA survey indicates the presence of three distinct macroinfaunal assemblages dominated by annelids, mollusks, and arthropods.

The proposed site is located at least two nmi from all known fish havens, artificial reefs, and fishing areas. Demersal fish collected at the candidate site were predominantly sciaenids. Estuarine dependent fishes collected in the trawl samples were bay anchovy, Atlantic croaker, spot, silver perch, and banded drum. Swimming crabs, penaeid shrimp, urchins, and shelled mollusks were also represented in the trawl samples.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site [40 CFR 228.6(a)(10)].*

The similarity of the physical and chemical nature of the dredged material to the existing sediments at the proposed site indicates that the development or recruitment of nuisance species is unlikely. It is improbable that fecal coliform bacteria will become established under the temperature and salinity conditions at the site.

11. *Existence at or in close proximity to the site of any significant natural or cultural featues of historical importance [40 CFR 228.6(a)(11)].*

The proposed site is at least six nmi from any identified feature on land and is over nine miles from the nearest known shipwreck. The Florida Division of Historical Resources has indicated that the proposed site designation will have no effect on any sites listed, or eligible for listing, in the *National Register of Historical Places*, and that the site designation is consistent with Florida's historic preservation laws and concerns.

G. Proposed Action

The EIS concludes that the proposed site may appropriately be designated for use. The proposed site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the Fernandina site as an EPA-approved Ocean Dumping Site is being published as proposed rulemaking. Management of this site will be delegated by the EPA Administrator to the Regional Administrator of EPA Region IV.

It should be emphasized that such a site designation does not give approval of actual disposal of materials at the site. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria (40 CFR, Part 227). If a Federal project is involved, the Corps of Engineers must also evaluate the proposed ocean disposal in accordance with the same criteria. In either case, EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

H. Regulatory Assessments

Under the Regulatory Flexibilty Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a

"major" rule. Consequently, this proposed rule does not necessitate preparation of a Regulatory Impact Analysis.

This proposed rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: December 23, 1986.

Jack E. Ravan,

Regional Administrator Region IV.

In consideration of the foregoing, Subchapter H of Chapter I of Title 409 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418.

2. Part 228 is proposed to be amended by removing paragraph (a)(1)(ii)(C) from § 228.12 and adding paragraph (b)(30) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(30) Fernandina Beach, Florida Dredged Material Disposal Site-Region IV.

Location:
30°33'00" N.; 81°16'52" W.
30°31'00" N.; 81°16'52" W.
30°31'00" N.; 81°19'08" W.
30°33'00" N.; 81°19'13" W.

Size: 4 square nautical miles
Depth: Average 16 meters
Primary use: Dredged Material
Period of use: Continuing use

Restrictions: Disposal shall be limited to dredged material which meets the criteria given in the Ocean Dumping Regulations, Part 227.

[FR Doc. 87-29491 Filed 1-5-87; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

[Docket No. 61235-6235]

Western Pacific Spiny Lobster Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement Amendment 4 to the Fishery Management Plan for the Spiny Lobster Fisheries of the Western Pacific Region (FMP). Amendment 4 would close all lobster fishing within 20 nautical miles of Laysan Island and within the fishery conservation zone (FCZ) landward of 10 fathoms in the Northwestern Hawaiian Islands (NWHI). The intended effect of this action is to implement conservation and management measures to protect spiny lobsters within refuge areas

DATE: Written comments must be received on or before February 13, 1987.

ADDRESS: Send comments to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. A copy of the amendment may be obtained from the Regional Director.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Administrator, Western Pacific Program Office, 2570 Dole Street, Room 106, Honolulu, HI 96822-2396, 808-955-8831.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the FMP appear at 50 CFR Part 681. The regulations at § 681.23(a) prohibit fishing for spiny lobster within 20 nautical miles of Laysan Island. The Western Pacific Fishery Management Council (Council) adopted this closure along with a closure to spiny lobster fishing landward of 10 fathoms in the NWHI at § 681.23(b), to enhance the probability of continued larval recruitment and to serve as control areas for assessing the effects on spiny lobster stocks where commercial fishing is allowed.

When the regulations were implemented, only spiny lobster fishing was prohibited in refuge areas because the only directed lobster fishing was for two species of spiny lobster. There now is a major directed fishery for slipper lobster. Allowing fishing for slipper lobster in refuge areas would cause two problems. First, some spiny lobster mortality would result; therefore, the refuge would not provide the complete protection for spiny lobster that was anticipated when the plan and regulations were adopted. Second, enforcement of the prohibition on spiny lobster fishing would be difficult and expensive because the regulations are primarily enforced at dockside. If a fisherman were seen fishing in a refuge, it would be impossible to tell if he was fishing for spiny lobster or for slipper lobster. This proposed rule will comply with the Council's original intent to provide a total refuge for spiny lobster.

On August 8, 1986, at the Council's 54th meeting in Kailua-Kona, Hawaii, it recommended that the Secretary prohibit slipper lobster fishing within 20 nautical miles of Laysan Island and within 10 fathoms in the NWHI, consistent with the FMP's original intent. This action was recommended by majority vote of the Council under section 305(e)(2)(B) of the Magnuson Act. Emergency regulations were effective on September 26, 1986 (October 1, 1986, 51 FR 34991), through December 26, 1986 (90 days).

Amendment 4 to the FMP adopts the emergency rule as permanent, prohibiting all lobster fishing within 20 nautical miles of Laysan Island and within the FCZ landward of 10 fathoms in the NWHI.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 97-453, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 30 days of receipt of any amendment to an FMP. At this time the Secretary has not determined that the FMP amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment as part of the FMP and concluded that there will be no significant impact on the environment as a result of this rule.

The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The present action will not have a cumulative effect on the economy of $100 million or more nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated. The Council prepared a regulatory impact review which concludes that this rule will have the following economic effects.

The proposed action is expected to preserve the conservation benefits afforded by the refuge areas while not imposing any additional costs on the industry. By precluding the possibility of fishermen exploiting a regulatory loophole and concomitently a potential increase in fishing mortality, the

amendment is expected to aid recruitment and increase revenue for the fishery in the long-run, relative to the no-action alternative. Benefits will also be realized by avoiding additional enforcement costs, providing continuing protection to monk seals, and preserving areas for future stock assessment research. To date, no fishing has been recorded in the refuge areas, so that fishermen are not dependent nor do they have an investment in fishing in those areas. As a result, the action will not reduce revenues to fishermen, nor impose any incremental increase in harvesting or administrative costs. You may obtain a copy of this review from the Regional Director at the address listed above.

This proposed rule is exempt from the review procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 97–453, require the Secretary to publish this proposed rule 30 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small businesses because the rule ensures the continuance of current fishing practices and will not reduce revenue or impose additional incremental costs on fishermen. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act (PRA).

The Council has determined that the measures established in Amendment 4 are consistent to the maximum extent practicable with the approved coastal zone management program in Hawaii. A letter requesting the State of Hawaii's concurrence with this determination was forwarded on November 4, 1986.

List of Subjects in 50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

Dated: December 31, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Part 681 is proposed to be amended as follows:

PART 681—[AMENDED]

1. The authority citation for Part 681 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 681.7, paragraph (b)(1) is revised to read as follows:

§ 681.7 Prohibitions.

* * * * *

(b) * * *

(1) Fish for, take, or retain lobsters:

(i) By methods other than lobster traps or by hand for spiny lobster, as specified in § 681.24, or

(ii) From closed areas for lobsters, as specified in § 681.23.

* * * * *

3. Section 681.23 is revised to read as follows:

§ 681.23 Closed areas (refugia).

(a) All lobster fishing is prohibited within 20 nautical miles of Laysan Island.

(b) All lobster fishing is prohibited within the FCZ landward of the 10 fathom curves as depicted on National Ocean Survey Charts, Numbers 19022, 19019, 19016.

[FR Doc. 86–29542 Filed 12–31–86; 4:17 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 3
Tuesday, January 6, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 2, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- National Agricultural Statistics Service

Eggs, Chicken and Turkey Surveys
Weekly, Monthly, Quarterly, Annually
Farms; Businesses or other for-profit; 45,796 responses; 7,117 hours; not applicable under 3504(h)
Larry Gambrell (202) 447-7737

- Rural Electrification Administration
- Checklist for review of supplemental loan proposal or area coverage design

REA 567
On occasion
Small businesses or organizations; 150 responses; 150 hours; not applicable under 3504(h)
M. Wilson Magruder (202) 382-8663

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 87-173 Filed 1-5-87; 8:45 am]

BILLING CODE 3410-01

Forest Service

Dixie National Forest, Garfield County, UT; Revised Notice of Intent to Prepare an Environmental Impact Statement

This Notice of Intent to Prepare an Environmental Impact Statement (EIS) revises a similar Notice published in the **Federal Register** on November 21, 1986. The revised Notice establishes different dates for preparation of the EIS.

The Department of Agriculture, Forest Service, will prepare an EIS to determine which lands should be offered for competitive oil, gas, and CO_2 leasing within the Escalante Known Geological Structure (KGS). The Bureau of Land Management (BLM), which has the authority to issue oil and gas leases on Federal lands, has been requested to offer for lease certain lands within the KGS near Escalante, Utah.

Preliminary analysis of the proposal has determined the need for an EIS.

A range of alternatives for competitive lease issuance will be considered. One of the alternatives will consider no new lease issuance, but will honor all existing leases in the KGS. Other alternatives will consider new lease offerings in different areas of the KGS, including an alternative considering issuance of leases on all available lands and full gas field development.

The BLM is a cooperating agency in preparation of the EIS since they administer some of the land within the KGS.

The Fish and Wildlife Service will be invited to participate as a cooperative agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the KGS.

Comments on the leasing proposal will be accepted until January 16, 1987. Additional information will be available at an "Open House" to be held in the Forest Service office in Escalante, Utah, on January 9, 1987, from 6 p.m. to 9 p.m.

Written comments and suggestions concerning the proposal should be sent to Mr. Hugh Thompson, Forest Supervisor, Dixie National Forest, Cedar City, Utah 84720.

Mr. J.S. Tixier, Regional Forester, Intermountain Region, Ogden, Utah, is the responsible official. The draft EIS should be available for public review by April 1987. The final EIS is scheduled to be completed by October 1987.

Questions about the proposed action and EIS should be directed to Calvin Bird, Forest Land Planner, Dixie National Forest, Cedar City, Utah 84720, or Douglas Austin, District Ranger, Escalante Ranger District, Escalante, Utah 84726, phone (801) 826-4221.

Dated: December 30, 1986.

T.A. Roederer,

Deputy Regional Forester, Resources.

[FR Doc. 86-29527 Filed 12-31-87; 10:32 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Receipt of Application for General Permit to Incidentally Take Marine Mammals; Scan Ocean Inc.

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. exclusive economic zone (EEZ) during 1987 as

authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the regulations thereunder.

Scan Ocean Inc., Gloucester, Massachusetts, on behalf of Netherlands fishing companies has applied for a Category 1: "Towed and Dragged Gear" general permit to take up to twenty (2) small cetaceans and up to five (5) pinnipeds in the North Atlantic Ocean.

In 1985, Netherlands vessels took 48 cetaceans in the U.S. EEZ under a general permit.

The application is available for review in the Office of Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Washington DC.

Dated: December 30, 1986.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–157 Filed 1–5–87; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Textiles and Textile Products Produced or Manufactured in Taiwan

December 31, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 337–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–8791. For information on embargoes and quota reopenings, please call (202) 377–3715.

Background

On October 14 and 22, 1986, the American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA) exchanged letters further amending and extending the bilateral agreement of November 18, 1982, as previously amended, concerning textiles and textile products of cotton, wool and man-made fibers to include textiles and textile products of silk blends and vegetable fibers, other than cotton, produced or manufactured in Taiwan and exported during the period beginning on January 1, 1986 and extending through December 31, 1988.

The new agreement establishes, among other things, group limits, and within the groups, individual limits, for cotton, wool, man-made fiber textiles and apparel for Groups I and II, with sublimits for shirts and blouses of yarn-dyed man-made fiber fabrics in Categories 640 and 641, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. It also establishes a prorated group limit (III) on apparel of silk blends and vegetable fibers, other than cotton, as well as individual prorated limits for sweaters and luggage of silk blends and vegetable fibers, other than cotton, in Categories 845 and 870, produced or manufactured in Taiwan and exported during the August 1, 1986 through December 31, 1986 period. These prorated limits will be published in a separate directive.

The new agreement adjusts the base limits for Categories 338/339, 347/348 (sublimits for 347 and 348), 435, 638, 639, 647 and 659–H. The limits for Groups I and II and for Categories 310/318, 313, 314, 315, 319, 320, 336, 338/339, 340, 341, 342, 345, 347/348, 353/354/653/654, 359–H, 360, 361, 363, 369–L, 433, 436, 444, 445/446, 447/448, 604, 611, 612, 613, 614–P, 631, 632, 633/634/635, 638, 639, 640, 641, 642, 643, 644, 647, 648, 649, 650, 652, 659–B, 659–I, 659–S, 669–P, 670–L and 670–H have been adjusted, variously, for available carryover, carryforward, or swing.

In the letter which follows this notice, the CITA Chairman amends the directive of December 23, 1985, as amended, and directs the Commissioner of Customs to implement the designated new limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 31, 1986

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends the directive of December 23, 1985, as amended by directives of April 24, June 4 and October 30, 1986 concerning cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Taiwan. Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the bilateral agreement of November 18, 1982, as amended and further extended, concerning textiles and textile products of cotton, wool, man-made fibers, produced or manufactured in Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986:

Category	12-mo limit [1]
300, 301, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 360, 361, 362, 363, 369, 400, 410, 411, 425, 429, 464, 465, 469, 600, 601, 602, 603, 604, 605, 610, 611, 612, 613, 614, 625, 626, 627, 665, 666, 669 and 670, as a group (I).	660,327,850 square yards equivalent.
301	427,333 pounds.
310/318	6,141,800 square yards.
313	47,524,434 square yards.
314	3,681,482 square yards.
315	30,137,311 square yards.
317	19,326,733 square yards.

Category	12-mo limit[1]
319	14,941,188 square yards.
320	91,972,207 square yards.
330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 345, 347, 348, 349, 350, 351, 352, 353, 354, 359, 431, 432, 433, 434, 435, 436, 438, 440, 442, 443, 444, 445, 446, 447, 448, 459, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648 649, 650, 651, 652, 653, 654 and 659, as a group (II).	990,988,750 square yards equivalent.
331	480,137 dozen pairs.
333/334	70,604 dozen.
335	86,895 dozen.
336	86,687 dozen.
337	141,167 dozen.
338/339	701,858 dozen.
340	745,860 dozen.
341	397,946 dozen.
342	201,730 dozen.
345	94,486 dozen.
347/348	1,017,575 dozen of which not more than 499,764 dozen shall be in Cat. 347 and not more than 806,801 dozen shall be in Cat. 348.
350	97,041 dozen.
351	313,654 dozen.
352	876,397 dozen.
353/354/653/654.	107,063 dozen.
359–I[2]	1,250,500 pounds.
359–H[3]	3,582,071 pounds.
360	841,697 numbers.
361	1,060,696 numbers.
363	12,965,265 numbers.
369–L[4]	2,579,877 pounds.
433	12,716 dozen.
434	9,296 dozen.
435	20,010 dozen.
436	4,614 dozen.
438	35,564 dozen.
440	10,100 dozen.
442	37,471 dozen.
443	3,924 dozen.
444	15,527 dozen.
445/446	134,600 dozen.
447/448	18,198 dozen.
604	511,358 pounds.
605–T[5]	1,031,719 pounds.
611	1,289,865 square yards.
612	10,370,457 square yards.
613	30,905,503 square yards.
614–P[6]	15,272,244 square yards.
631	3,847,398 dozen pairs.
632	4,244,525 dozen pairs.
633/634/635	1,563,530 dozen of which not more than 1,028,960 dozen shall be in Cat. 633/634 and not more than 766,886 dozen shall be in Cat. 635.
636	330,389 dozen.
637	354,881 dozen.
638	1,935,384 dozen.
639	4,665,927 dozen.
640	3,286,979 dozen of which not more than 1,643,490 dozen shall be in TSUSA numbers 381.3132, 381.3142, 381.3152, 381.9535, 381.9547 and 381.9550.
641	742,908 dozen of which not more than 260,018 dozen shall be in TSUSA numbers 384.9110 and 384.9120.
642	618,160 dozen.
643	41,597 dozen.
644	175,422 dozen.
645/646	4,026,555 dozen.
647	2,585,906 dozen.
648	3,293,038 dozen.
649	586,266 dozen.
650	41,191 dozen.
651	393,344 dozen.
652	1,434,104 dozen.
659–B[7]	1,002,637 pounds.
659–H[8]	5,257,386 pounds.
659–I[9]	3,858,508 pounds.
659–S[10]	3,662,270 pounds.
669–F[11]	1,071,934 pounds.
669–P[12]	576,137 pounds.
669–T[13]	1,750,061 pounds.
670–L[14]	75,334,398 pounds of which not more than 3,472,553 pounds shall be in braided luggage in TSUSA number 706.3415.
670–H[15]	26,251,910 pounds of which not more than 445,676 pounds shall be in braided handbags in TSUSA number 706.3405.
670–F[16]	3,801,965 pounds of which not more than 111,965 pounds shall be in braided flatgoods in TSUSA number 706.3425.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.

[2] In Category 359, only TSUSA number 384.0439, 384.0441, 384.0442, 384.0444, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.3445, 384.3446, 384.3447, 384.3448, 384.5162, 384.5163, 384.5167, 384.5169, and 384.5172.

[3] In Category 359, only TSUSA numbers 702.0600 and 702.1200.

[4] In Category 369, only TSUSA numbers 706.3210, 706.3650 and 706.4111.

[5] In Category 605, only TSUSA number 310.9500.

[6] In Category 614, only TSUSA numbers 338.5040, 338.5045, 338.5051, 338.5056, 338.5061, 338.5065, 338.5069, 338.5072, 338.5075, 338.5079, 338.5084, 338.5087, 338.5092, 338.5095 and 338.5098.

[7] In Category 659, only TSUSA numbers 384.1815 and 384.8022.

[8] In Category 659, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

[9] In Category 659, only TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.8356, 384.9357, 384.9358, 384.9359 and 384.9365.

[10] In Category 659, only TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400 and 384.9353.

[11] In Category 669, only TSUSA numbers 355.4520 and 355.4530.

[12] In Category 669, only TSUSA number 385.5300.

[13] In Category 669, only TSUSA numbers 386.1105 and 389.6210.

[14] In Category 670, only TSUSA numbers 706.3415, 706.4130 and 706.4135.

[15] In Category 670, only TSUSA numbers 706.3405 and 706.4125.

[16] In Category 670, only TSUSA numbers 706.3425 and 706.3900.

In carrying out this directive, entries of textiles and textile products in the foregoing categories, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1985 and extended through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the restraint limits established for them during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits for categories 447 and 448 have been merged, with no sublimits. The limits for 659 part (caps in T.S.U.S.A. numbers 703.1610, 703.1620, 703.1630, 703.1640 and 706.1650) and 659 pt. (other hats in T.S.U.S.A. numbers 703.0510, 703.1520, 703.0530, 703.0540, 703.0550, 703.0560 and 703.1000) have been merged, with no sublimits.

Category 640 has a sublimit for category 640 pt (T.S.U.S.A. nos. 381.3122, 381.3142, 381.3152, 381.9535, 381.9547 and 381.9550). Category 641 has a sublimit for category 641 pt (T.S.U.S.A. nos. 384.9110 and 384.9120).

Import charges made to the foregoing categories as of the effective date of this directive, pursuant to the directive of December 23, 1985 for merchandise exported on and after January 1, 1986, should be retained, as applicable. Missing charges for the group and category limits and sublimits not previously controlled will be provided by separate letter.

The limits are subject to adjustment in the future pursuant to the provisions of the agreement of November 18, 1982, as amended

and extended, which provide, in part, that: (1) Group and specific limits and sublimits within the groups may be exceeded by designated percentages, except for Categories 645/646, 659–H whose limits already include these adjustments for the duration of the agreement; (2) Categories 338/339, 340, 369–L and 670–L or 670–H, may be increased by up to ten percent; Category 638 may be exceeded by ten percent, in addition to 320,000 dozen; and 670–F may be exceeded by 2 percent for special shift during the agreement year; (3) administrative arrangements of adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under these provisions of the bilateral agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (47 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–148 Filed 1–5–87; 8:45 am]

BILLING CODE 3510–DR–M

Establishment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blends and other Vegetable Fiber Textile Products From Taiwan Effective on January 1, 1987

December 23, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–8791. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

The bilateral agreement of November 18, 1982 as amended, concerning cotton, wool, man-made fiber, silk blends and other vegetable fiber, produced or manufactured in Taiwan, establishes specific limits for cotton, wool and man-made fiber non-apparel Categories 300–320, 360–369, 400–429, 464–469, 600–627, 665–670, as a group (Group I), and within the group, individual Categories 301, 310/318, 313, 314, 315, 317, 319, 320, 360, 361, 363, 369–L., 604, 605–T, 611, 612, 613, 614–P., parts of 669, and parts of 670; cotton, wool and man-made fiber apparel Categories 330–359, 431–459, 630–659, as a group (Group II) and within, the group, individual Categories 331, 333/334, 335, 336, 337, 338/339, 340, 341, 342, 345, 347/348, 350, 351, 352, 353/354/653/654, parts of 359, 433, 434, 435, 436, 438, 440, 442, 443, 444, 445/446, 447/448, 631, 632, 633/634/635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645/646, 647, 648, 649, 650, 651, 652, parts of 659; and silk blend and other vegetable fiber apparel, 831–844, 846–859, as a group (Group III), and individual limits for Categories 845 and 870, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987. Accordingly, there is published below a letter from the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that entry into the United States for consumption or withdrawal from warehouse for consumption, of cotton, wool, man-made fiber, silk blends and other vegetable fiber textile products in the foregoing categories be limited to the designated amounts during the agreement year which begins on January 1, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on July 29, 1986 (51 FR 27068) and on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

December 23, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blends and other Vegetable Fiber Textile Agreement of November 18, 1982, as amended, concerning cotton, wool, man-made fiber, silk blends and other vegetable fiber textile products from Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987 in excess of the indicated restraint limits:

Category	12-month restraint limit
300–320, 360–369, 400–429, 464–469, 600–627, 665–670, as a group.	642,745,713 square yards.
301	438,119 pounds.
310/318	5,883,500 square yards.
313	45,506,888 square yards.
314	3,526,653 square yards.
315	29,150,461 square yards.
317	19,809,902 square yards.
319	19,976,813 square yards.
320	88,104,218 square yards.
360	829,557 numbers.
361	1,045,398 numbers.
363	12,419,996 numbers.
369–L [1]	2,260,149 pounds.
604	489,649 pounds.
605–T [2]	1,057,512 pounds.
611	1,235,618 square yards.
612	9,934,317 square yards.
613	29,605,739 square yards.
614–P [3]	14,629,953 square yards.
669–F [4]	1,098,733 pounds.
669–P [5]	551,907 pounds.
669–T [6]	1,793,813 pounds.
670–L [7]	70,325,803 pounds of which not more than 3,220,003 pounds shall be in TSUSA number 706.3415.

Category	12-month restraint limit
670–H [8]	38,989,790 pounds of which not more than 454,590 pounds shall be in TSUSA number 706.3405.
670–F [9]	3,897,014 pounds of which not more than 114,764 pounds shall be in TSUSA number 706.3425.
330–359, 431–459, 630–659, as a group.	968,343,438 square yards equivalent.
331	482,538 dozen pair.
333/334	73,781 dozen.
335	90,806 dozen.
336	86,628 dozen.
337	144,696 dozen.
338/339	653,112 dozen.
340	657,536 dozen.
341	380,891 dozen.
342	193,246 dozen.
345	90,513 dozen.
347/348	983,975 dozen of which not more than 483,262 dozen shall be in Category 347 and 780,161 dozen shall be in Category 348.
350	99,467 dozen.
351	321,495 dozen.
352	898,307 dozen.
353/354/653/654.	232,871 dozen.
359–I [10]	1,281,763 pounds.
359–H [11]	4,202,500 pounds.
433	12,716 dozen.
434	9,389 dozen.
435	20,210 dozen.
436	4,438 dozen.
438	35,920 dozen.
440	10,201 dozen.
442	37,846 dozen.
443	3,963 dozen.
444	14,936 dozen.
445/446	128,831 dozen.
447/448	17,505 dozen.
631	3,993,300 dozen pair.
632	4,307,563 dozen pair.
633/634/635	1,543,234 dozen of which not more than 1,017,788 dozen shall be in Category 633/634 and 756,931 dozen shall be in Category 635.
636	325,724 dozen.
637	363,753 dozen.
638	1,600,633 dozen.
639	4,974,683 dozen.
640	3,319,861 dozen of which not more than 1,659,931 dozen shall be in TSUSA numbers 381.9535, 381.3132, 381.3142, 381.3152, 381.9547 and 381.9550.
641	717,907 dozen of which not more than 251,267 dozen shall be in TSUSA numbers 384.9110 and 384.9120.
642	618,160 dozen.
643	46,839 dozen.
664	168,045 dozen.
645/646	4,046,688 dozen.
647	2,475,082 dozen.
648	3,151,908 dozen.
649	675,552 dozen.
650	46,321 dozen.
651	403,178 dozen.
652	1,399,959 dozen.
659–B [12]	1,559,559 pounds.
659–C [13]	1,149,411 pounds.
659–H [14]	5,283,673 pounds.
659–I [15]	3,628,414 pounds.
659–S [16]	4,403,903 pounds.
831–844, 846–859, as a group.	9,155,087 square yards equivalent.
845	845,120 dozen.
870	5,234,877 pounds.

[1] In Category 369, only TSUSA numbers 706.3210, 706.3650 and 706.4111.

[2] In Category 605, only TSUSA number 310.9500.

[3] In Category 614, only TSUSA numbers 338.5040, 338.5045, 338.5051, 338.5056, 338.5061, 338.5065, 338.5069, 338.5072, 338.5075, 338.5079, 338.5084, 338.5087, 338.5092, 338.5095, and 338.5098.

[4] In Category 669, only TSUSA numbers 355.4520 and 355.4530.

[5] In Category 669, only TSUSA number 385.5300.

[6] In Category 669, only TSUSA numbers 386.1105 and 389.6210.

[7] In Category 670, only TSUSA numbers 706.3415, 706.4130 and 706.4135.

[8] In Category 670, only TSUSA numbers 706.4125 and 706.3405.

[9] In Category 670, only TSUSA numbers 706.3900 and 706.3425.

[10] In Category 359, only TSUSA numbers 384.0439, 384.0441, 384.0442, 384.0444, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.3451, 384.3452, 384.3453, 384.3454, 384.5162, 384.5163, 384.5167, 384.5169 and 384.5172.

[11] In Category 359, only TSUSA numbers 702.0600 and 702.1200.

[12] In Category 659, only TSUSA numbers 384.1815 and 384.8022.

[13] In Category 659, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

[14] In Category 659, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560 and 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

[15] In Category 659, only TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359 and 384.9365.

[16] In Category 659, only TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400 and 384.9353.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Taiwan, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986 and for the period August 1–December 31, 1986, shall, to the extent of any unfilled balances, be charged against the levels of restraint for their respective periods. In the event the levels of restraint established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The limits are subject to adjustment in the future pursuant to the provisions of the agreement of November 18, 1982, as amended and extended, which provide, in part, that: (1) Group and specific limits and sublimits within the group may be exceeded by designated percentages, except for Categories 645/646, 659–H, whose limits already include these adjustment for the duration of the agreement; (2) Categories 338/339, 340, 369–L and 670–L or 670–H, may be increased by up to ten percent; Category 638 may be exceeded by 2 percent, in addition to 320,000 dozen; and 670–F may be exceeded by 2 percent for special shift during the agreement year; (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under these provisions of the bilateral agreement will be made to you by letter.

A description of the Textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of the Textile agreements has determined that these actions fall within the foreign affairs exceptions to the rulemaking provisions of 5 U.S.C. (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–149 Filed 1–5–87; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 29, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Space-Based Radar will meet at the Pentagon, Room 5D982, on January 27–28, 1987, from 8:30 A.M. to 5:00 P.M. each day.

The purpose of this meeting is to receive briefings on, to discuss, and to advise senior Air Force personnel on the feasibility of pursuing a proposed modification to a shuttle imaging radar experiment.

This meeting will involve discussions of classified defense matters listed in

section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-114 Filed 1-5-87; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Performance of Commercial Activities; Announcement of Program

December 10, 1986.

The Department of the Navy intends to conduct OMB Circular A-76 (48 FR 37110, August 16, 1983) cost studies of various functions at the listed activities. The cost study process is a time-consuming procedure and, depending upon the size of the functions involved, can take several months to several years to complete. Upon completion of the cost study process, solicitations will be synopsized in the *Commerce Business Daily* with instructions for potential contractors prior to bid opening. Consolidated bidders' lists are not maintained since the solicitations will be processed by various contracting offices throughout the U.S.

Naval Supply Center, Oakland, CA

Preservation and Packaging
Packing and Crating

Naval Supply Center, San Diego, CA

Packing and Crating
Preservation and Packaging

Fleet Aviation Specialized Operational Training Group, Pacific Fleet, San Diego, CA

Custodial Services
Other Vehicle Operations (Light Truck/Auto)
Broadcasting

Fleet Aviation Specialized Operational Training Group Detachment, Pacific Fleet, Lemoore, CA

Custodial Services
Audiovisual and Visual Information Services
Broadcasting

Fleet Aviation Specialized Operational Training Group Detachment, Pacific Fleet, Miramar, CA

Training Devices and Audiovisual Equipment
Broadcasting

Fleet Aviation Specialized Operational Training Group Detachment, Pacific Fleet, Moffett Field, CA

Custodial Services
Broadcasting

Naval Electronic Systems Security Engineering Center, Washington, DC

Operation of ADP Equipment

Naval Air Station, Pensacola, FL

Aircraft
Aircraft Engines
Other Test, Measurement and Diagnostic Equipment
Aeronautical Support Equipment
Electronic and Communication Equipment

Naval Supply Center, Jacksonville, FL

Packing and Crating
Preservation and Packaging

Naval Supply Center, Pensacola, FL

Packing and Crating
Preservation and Packaging

Naval Supply Center, Pearl Harbor, HI

Packing and Crating
Preservation and Packaging

Fleet Aviation Specialized Operational Training Group Detachment, Pacific Fleet, Barbers Point, HI

Custodial Services

Navy Public Works Center, Pearl Harbor, HI

Grounds Maintenance Services

Naval Training Center, Great Lakes, IL

Audiovisual Services

Naval Hospital, Bethesda, MD

Medical Records Transcription

Naval Ordnance Station, Indian Head, MD

Laundry and Drycleaning Services

Naval Air Engineering Center, Lakehurst, NJ

Grounds and Surfaced Areas
Insect and Rodent Control

Naval Supply Center, Charleston, SC

Packing and Crating
Preservation and Packaging

Naval Supply Center, Norfolk, VA

Preservation and Packaging
NARF Preservation and Packaging
NARF Packing and Crating
Packing and Crating
CAX Packing and Crating

Naval Supply Center, Puget Sound, WA

Packing and Crating
Preservation and Packaging

Fleet Aviation Specialized Operational Training Group Detachment, Pacific Fleet, Whidbey Island, WA

Custodial Services
Broadcasting

Dated: December 10, 1986.

T.H. Upton,

Head, Commercial Activities Branch.

[FR Doc. 87-1 Filed 1-5-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Agency Information Collection Activities Under OMB Review

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 5, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection,

grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: December 30, 1986.

Carlos U. Rice,

Acting Director, Information Technology Services.

Office of Elementary and Secondary Education

Type of Review: Revision
Title: Application for the Migrant Education Basic Formula Grant Program
Agency Form Number: ED 362
Frequency: Recordkeeping
Affected Public: State or local governments
Reporting Burden:
Responses: 51
Burden Hours: 714
Recordkeeping Burden:
Recordkeepers: 51
Burden Hours: 51

Abstract: State educational agencies (SEAs) are required to submit an application to the Secretary for Federal assistance to operate a State Migrant education program. The program awards grants to (SEAs) to establish or improve programs of education designed to meet the special educational needs of migratory workers or migratory fishers.

Type of Review: New
Title: Application for Federal Financial Assistance under the Drug Free Schools and Communities Act of 1986
Agency Form Number: A10–10P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 57
Burden Hours: 1368
Recordkeeping Burden:
Recordkeepers: 57
Burden Hours: 57

Abstract: This application is needed to ensure that the state agencies and State educational agencies will fulfill the statutory responsibilities of Part 2 of Drug Free Schools and Community Act of 1986.

Office of Special Education and Rehabilitative Services

Type of Review: New
Title: Longitudinal Study of a Sample of Handicapped Students
Agency Form Number: B20–15P
Frequency: Annually
Affected Public: Individuals or households; state or local governments
Reporting Burden:
Responses: 7834
Burden Hours: 3224
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This study will collect data on the educational, employment, and independent living status of a sample of handicapped youth while in school and upon entering adult life. Results will inform the Department of Education and Congress about the transitional progress of handicapped students from special education to work.

Type of Review: Reinstatement
Title: Written Request for Assistance or Application for Client Assistance Program
Agency Form Number: B20–1P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 57
Burden Hours: 9.5
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This document is used to request funds to establish and carry out Client Assistance Programs (CAP) which assist client applicants with projects, programs and facilities authorized by the Rehabilitation Act of 1973 and its amendments.

Office of Elementary and Secondary Education

Type of Review: Revision
Title: Indian Student Certification Form—Indian Education Programs
Agency Form Number: ED 506
Frequency: Annually
Affected Public: Individuals or households; state or local governments
Reporting Burden:
Responses: 319,500
Burden Hours: 26,625
Recordkeeping Burden:
Recordkeepers: 1,125
Burden Hours: 563

Abstract: A completed Student Certification Form for each Indian student must be on file in the office of the applicant in order to qualify for a formula grant under Part A of the Indian Education Act. The grant is based on the number of *bona fide* Indian students identified by the applicant.

[FR Doc. 87–131 Filed 1–5–87; 8:45 am]
BILLING CODE 4000–01–M

[CFDA No.: 84.029M]

Notice Inviting Applications for New Award Under the Parent Training and Information Program for Fiscal Year 1987

Purpose: Under section 631(c)(8) of the Education of the Handicapped Act, 20 U.S.C. 1431(c)(8), the Secretary is authorized to provide a cooperative agreement to support technical assistance for establishing, developing, and coordinating parent training and information programs.

Deadline for Transmission of Applications: April 1, 1987.

Applications available: February 1, 1987.

Available Funds: $750,000.

Estimated Size of Award: $750,000.

Estimated Number of Awards: 1.

Project Period: 60 Months.

For Applications or Information Contact: Dr. John Tringo, U.S. Department of Education, 400 Maryland Avenue SW., Room 4620, Washington, DC 20202. Telephone: (202) 732–1032.

Program Authority: 20 U.S.C. 1431(c)(8).

Dated: December 29, 1986.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 87–182 Filed 1–5–87; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA C&E–87–14 OFP Case No. 62023–9335–20, 21–24]

Acceptance of Petition for Exemption and Availability of Certification by the Enserch Development Corporation

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance.

SUMMARY: On November 25, 1986, Enserch Development Corporation (Enserch) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed combined cycle cogeneration facilities of approximately 207 MW which will be owned and operated by Encogen One Partners, Ltd., a yet to be formed partnership, and located in Dallas, Texas, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and

natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The facility for which Enserch is requesting a permanent exemption is to be comprised of two combustion generators having the capability of burning natural gas or #2 oil. The facility will also contain two supplementary fired heat recovery steam generators. The steam turbine will accept high pressure steam from the steam generators and deliver low pressure steam and/or generate additional electricity.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before February 20, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Docket No. ERA C&E-87-14 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-093, Washington, DC 20585, Telephone (202) 586-9624;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6947.

SUPPLEMENTARY INFORMATION: Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Enserch has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a cogeneration FUA permanent exemption, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. Enserch has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by Enserch pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on Enserch's petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that Enserch is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on December 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-116 Filed 1-5-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-56; OFP Case No. 65041-9328-20-24]

Order Granting O'Brien Energy Systems Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1987

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order Granting Exemption.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or the "Act"), to O'Brien Energy Systems (O'Brien). The permanent cogeneration exemption permits the use of natural gas as the primary energy source, for the proposed cogeneration facility to be located at Artesia, California. The final exemption order and detetailed information are provided in the "**SUPPLEMENTARY INFORMATION**" section below.

DATES: The order shall take effect on March 7, 1987.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

George Blackmore, Coal and Electricity Division, Office of Fuels Programs,

Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-093, Washington, DC 20585. Telephone (202) 252-1774;
Steven E. Ferguson, Esq. Office of General Counsel, Department of Energy, Forrestal Building—Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6749.

SUPPLEMENTARY INFORMATION: The facility for which O'Brien is requesting a permanent cogeneration exemption is a 26.7 MW combined cycle gas turbine in Artesia, California, which will generate electrical power for sale to Southern California Edison and produce steam to be used by the California Milk Producers. The system will consist of a gas turbine, a waste heat recovery boiler, and extraction/condensing steam turbine-generator. The facility will turn natural gas and will be capable of utilizing #2 oil as a back-up fuel.

Procedural Requirements:

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on October 31, 1986, (51 FR 32826), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on December 15, 1986; no comments were received and no hearing was requested.

Order Granting Permanent Cogeneration Exemption:

Based upon the entire record of this proceeding, ERA has determined that O'Brien has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to O'Brien to permit the use of natural gas as the primary energy source for its cogeneration facility.

Pursuant to section 702(c) of the Act of 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC on December 15, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-117 Filed 1-5-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-09; OFP Case No. 52164-2956-26, 27, 28, 29, 30-22]

Acceptance of Petition From Oklahoma Gas and Electric Company, Seminole Peaking Facility for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance.

SUMMARY: On December 9, 1986, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a proposed new peakload powerplant at its existing Seminole Generating Station (Seminole), from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) which: (1) Prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for five simple-cycle combustion turbine generators, Seminole generating station units 6GT, 7GT, 8GT, 9GT, and 10GT, with a maximum total capacity each of 82.8 MW for a combined total for all five units of 414 MW at ISO conditions of 59°F and 14.7 PSIA using natural gas. The proposed units are to be installed at OG&E's Seminole facility, a 3,300-acre site adjacent to the South Canadian River, about two miles northeast of Konawa, Oklahoma in the east central region of the state. The units will be able to burn either natural gas or petroleum as a primary energy source.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from OG&E Seminole at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **"SUPPLEMENTARY INFORMATION"** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register.**

DATES: Written comments are due on or before February 20, 1987. A request for public hearing must also be made within this 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-093, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-87-09 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra Couch, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone: (202) 252-6769
Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone: (202) 252-6947

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has

been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Seminole facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the OG&E petition.

OG&E submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine-generators will be operated solely as a peakload powerplant.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. OG&E has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new units under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by OG&E pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears durng the proceeding on OG&E's petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that OG&E is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC on December 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-122 Filed 1-5-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-08; OFP Case No. 52164-2947-21-22-22]

Acceptance of Petition From Oklahoma Gas and Electric Company, Arbuckle Peaking Facility for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance.

SUMMARY: On December 9, 1986, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a proposed new peakload powerplant at its existing Arbuckle Generating Station (Arbuckle), from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") 42 U.S.C. 8301 *et seq.)* which: (1) Prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for two simple-cycle combustion turbine generators, Arbuckle generating station units 1GT and 2GT, with a maximum total capacity each of 82.8 MW for a combined total for both units of 165.6 MW at ISO conditions of 59°F and 14.7 PSIA using natural gas. The proposed units are to be installed at OG&E's Arbuckle facility, a 59 acre site approximately ¾ mile north of Sulphur, Oklahoma on U.S. Highway 177 and Rock Creek. The units will be able to burn either natural gas or petroleum as a primary energy source.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from OG&E Arbuckle at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **"SUPPLEMENTARY INFORMATION"** section below.

As provided for in section 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register.**

DATES: Written comments are due on or before February 20, 1987. A request for public hearing must also be made within this 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-093, 1000 Independence Avenue, SW., Washington, DC 20585.

Document No. ERA-C&E-87-08 should be printed on the outside of the

envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra Couch, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone: (202) 252-6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone: (202) 252-6947

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Arbuckle facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the OG&E petition.

OG&E submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine-generators will be operated solely as a peakload powerplant.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUR permanent exemptions including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. OG&E has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new units under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by OG&E pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on OG&E's petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b), the acceptance of the petition by ERA does not constitute a determination that OG&E is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC on December 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR. Doc. 87-123 Filed 1-5-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-13; OFP Case No. 52164-2953-26-27-22]

Acceptance of Petition From Oklahoma Gas and Electric Company, Mustang Peaking Facility for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On December 9, 1986, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a proposed new peakload powerplant at its existing Mustang Generating Station (Mustang), from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA") or "the Act") (42 U.S.C. 8301 *et seq.*) which: (1) Prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for two simple-cycle combustion turbine generators, Mustang generating station units 6GT and 7GT, with a maximum total capacity each of 82.8 MW for a combined total for both units of 165.6 MW at ISO conditions of 59°F and 14.7 PSIA using natural gas. The proposed units are to be installed at OG&E's Mustang facility, a 355 acre site on the west bank of the North Canadian River in the western part of Oklahoma City, Oklahoma. The units will be able to burn either natural gas or petroleum as a primary energy source.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from OG&E Mustang at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **"SUPPLEMENTARY INFORMATION"** section below.

As provided for in section 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is avilable upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register.**

DATES: Written comments are due on or before February 20, 1987. A request for public hearing must also be made within this 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-093, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-87-13 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra Couch, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone: (202) 252-6769;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone: (202) 252-6947.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Mustang facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the OG&E petition.

OG&E submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine-generators will be operated solely as a peakload powerplant.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttal presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. OG&E has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new units under exemption.

DOE's Office of Environement, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by OG&E pursuant to 10 CFR 503.13, together with other relevant information. UInless it appears during the proceeding on OG&E's petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that OG&E is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC on December 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-124 Filed 1-5-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Adminstration

[Docket No. ERA-C&E-87-10; OFP Case No. 52164-2951-25-26-22]

Acceptance of Petitions From Oklahoma Gas and Electric Company, Horseshoe Lake Peaking Facility for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance.

SUMMARY: On December 9, 1986, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a proposed new peakload powerplant at its existing Horseshoe Lake Generating Station (Horseshoe Lake), from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) which: (1) Prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR § 503.41 for two simple-cycle combustion turbine generators, Horseshoe Lake generating station units 5GT and 6GT, with a maximum total capacity each of 82.8 MW for a combined total for both units of 165.6 MW at ISO conditions of 59°F and 14.7 PSIA using natural gas. The proposed units are to be installed at OG&E's Horseshoe Lake facility, at 900 acre site adjacent to the North Canadian River, about one mile west of Harrah, Oklahoma. The units will be able to burn either natural gas or petroleum as a primary energy source.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from OG&E Horseshoe Lake at any time during these proceedings where circumstances or procedural requirements may so require.

A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701(c) and (d) of FUA and 10 CFR §§ 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register.**

DATES: Written comments are due on or before February 20, 1987. A request for public hearing must also be made within this 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-093, 1000 Independence Avenue, SW., Washington, DC 20585.

Document No. ERA-C&E-87-10 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra Couch, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone: (202) 252-6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone: (202) 252-6947

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Horseshoe Lake facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the OG&E petition.

OG&E submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine-generators will be operated solely as a peakload powerplant.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. OG&E has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new units under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by OG&E pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on OG&E's petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that OG&E is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comment received in response to this document.

Issued in Washington, DC on December 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR. Doc. 87-119 Filed 1-5-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-11; OFP Case No. 52164-6095-24, 25, 26, 27, 28-22]

Acceptance of Petition From Oklahoma Gas and Electric Company, Sooner Peaking Facility for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance.

SUMMARY: On December 9, 1986, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a proposed new peakload powerplant at its existing Sooner Generating Station (Sooner), from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) which: (1) Prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR § 503.41 for five simple-cycle combustion turbine generators, Sooner Generating Station units 4GT, 5GT, 6GT, 7GT, and 8GT, with a maximum total capacity each of 82.8 MW for a combined total for all five units of 414 MW at ISO conditions of 59°F and 14.7 PSIA using natural gas. The proposed units are to be installed at OG&E's Sooner facility, a 10,400 acre site

adjacent to the Arkansas River, in North Central Oklahoma. The units will be able to burn either natural gas or petroleum as a primary energy source.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from OG&E Seminole at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the "SUPPLEMENTARY INFORMATION" section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the Federal Register.

DATES: Written comments are due on or before February 20, 1987. A request for public hearing must also be made within this 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-093, 1000 Independence Avenue SW, Washington, DC 20585.

Docket No. ERA-C&E-87-11 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra Couch, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-093, Washington, DC 20585, Telephone: (202) 252-6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Indendence Avenue SW., Room 6A-113 Washington, DC 20585, Telephone: (202) 252-6947

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Sooner facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate State air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the OG&E petition.

OG&E submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine-generators will be operated solely as a peakload powerplant.

On February 23, 1982, DOE published in the Federal Register (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. OG&E has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new units under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by OG&E pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on OG&E's petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that OG&E is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC on December 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-120 Filed 1-5-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-12; OFP Case No. 52164-2952-25, 26, 27, 28, 29-22]

Acceptance of Petition From Oklahoma Gas and Electric Company, Muskogee Peaking Facility for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance.

SUMMARY: On December 9, 1986, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a proposed new peakload powerplant at its existing Muskogee Generating Station (Muskogee), from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) which: (1) Prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the

criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for five simple-cycle combustion turbine generators, Muskogee generating station units 5GT, 6GT, 7GT, 8GT, and 9GT, with a maximum total capacity each of 82.8 MW for a combined total for all five units of 414 MW at ISO conditions of 59°F and 14.7 PSIA using natural gas. The proposed units are to be installed at OG&E's Muskogee facility, a 800 acre site adjacent to the Arkansas River, near Muskogee, Oklahoma. The units will be able to burn either natural gas or petroleum as a primary energy source.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from OG&E Muskogee at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **"SUPPLEMENTARY INFORMATION"** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register**.

DATES: Written comments are due on or before February 20, 1987. A request for public hearing must also be made within this 45-day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-093, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA-C&E-87-12 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra Couch, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone: (202) 252-6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone: (202) 252-6947

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Muskogee facility's simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate State air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the OG&E petition.

OG&E submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine-generators will be operated solely as a peakload powerplant.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. OG&E has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new units under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by OG&E pursuant to 10 CFR § 503.13, together with other relevant information. Unless it appears during the proceeding on OG&E's petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that OG&E is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC on December 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-121 Filed 1-5-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-17; OFP Case No. 66021-9327-22, 23-24]

Acceptance of Petition from Power Resources, Inc., for Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance.

SUMMARY: On December 22, 1986, Power Resources, Inc, filed a new petition with

the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for its proposed cogeneration facility to be located at Big Spring, Texas, from the Prohibitions of Title II of the Power Plant and Industrial Fuel Use Act of 1978 (42 U.S.C. § 8301 *et seq.*) ("FUA" or "the Act"). This petition is to supersede the Previous Power Resources petition filed on September 12, 1986 (Docket No. ERA C&E 86–55; OFP Case No. 66021–9327, 20, 21–24) for which an order granting exemption was issued by DOE on November 4, 1986 (51 FR 40847). Title II of FUA prohibits both the use of powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts, 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **"SUPPLEMENTARY INFORMATION"** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested prsons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

This public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon requests through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibition of the Act within six months after the end of the period for public comment and hearing unless ERA extends such period. Notice of any such extension, together with a statement of reasons, therefore, would be published in the **Federal Register.**

DATES: Written comments are due on or before February 20, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs Room GA–093, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA–C&E–86–55 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal & Electricity Division, Office of Fuels, Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone (202) 252–4807;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: The facility for which Power Resources, Inc. is requesting a permanent exemption will be a topping-cycle facility, construction of which is scheduled to commence in early 1987. The primary energy source of the facility will be natural gas and refinery off-gas. The facility's two combustion turbine generators and steam turbine generator will have a combined maximum net output of 225.2 MW during the final stage of project development. A second steam turbine will produce shaft power equivalent to approximately 1 MW of electricity. Power production of the facility will be developed in two phases. Thermal load will be constant throughout development of the project. During phase 1, tow combustion turbine generators will produce approximately 85.9 MW of electricity. Waste heat will be used to produce steam that will be sold to the Fina Oil and Chemical Company. During phase 2, two combustion turbine generators will each produce approximately 85.9 MW of electricity. Waste heat will be used to produce steam that will be sold to the Fina Oil and Chemical Company. Exhaust gas from these turbines will be sent to waste heat recovery boilers to produce steam. All steam will pass through an extracting, condensing turbine. The steam turbine will produce approximately 53.4 MW of electricity. Extracted steam will be sold to the Fina Oil and Chemical Company.

It is expected that phase 1 and 2 will be in operation less than a year and eight to nine months, respectively. In both phases, 100% of the electricial output of the facility will be sold to Texas Utilities Electric Company.

The facility will not run on an annual basis during phase 1. The annual useful thermal output and use during phase 2 is to be 107.1×10^{10} Btu/yr.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Power Resources, Inc. has certified to ERA that:

1. The oil and gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a cogeneration FUA permanent exemption, is among the classes of action that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. Power Resources, Inc. has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by Power Resources, Inc. to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on Power Resources, Inc. petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that Power Resources, Inc. is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during

the public comment period provided for in this notice.

Issued in Washington, DC on December 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-118 Filed 1-5-87 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-181-000 et al.]

Arizona Public Service Co. et al.; Electric Rate and Corporate Regulation Filings

December 30, 1986.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER87-181-000]

Take notice that Arizona Public Service Company (APS) on December 22, 1986, tendered for filing a Supplemental Agreement No. 2 (Agreement) executed September 5, 1986 to the Transmission Agreement Between Arizona Public Service Company (APS) and the Yuma Mesa Irrigation and Drainage District (District) dated July 17, 1964.

This Agreement provides for a change in rate level for service under the Transmission Agreement to reflect current levels. It also changes Billing and Payment provisions to reflect current APS practices that are consistent with other more recent agreements.

Waiver of notice requirements under 18 CFR 35.11 is requested so that the Agreement can be made effective on September 7, 1986.

Copies of this filing have been served upon the Arizona Corporation Commission and the District.

Comment date: January 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. American Electric Power Generating Company

[Docket No. ER84-579-007]

Take notice that on December 8, 1986, American Electric Power Generating Company (AEP) tendered for filing a compliance report in accordance with the order issued by the Commission October 22, 1986.

AEP states that it refunded by check $4,695,993.66 ($4,221,811.00 principal and $474,182.66 interest) to Indiana & Michigan Electric Company and $2,012,580.90 ($1,809,359.00 principal and $203,221.90 interest) to Kentucky Power Company.

Copies of the compliance report have been sent to the Public Service Commission of Indiana, the Michigan Public Service Commission and Public Service Commission of the Commonwealth of Kentucky.

Comment date: January 9, 1987, in accordance with Standard Paragraph E at the end of this document.

3. Arkansas Power & Light Company

[Docket No. ER81-577-014]

Take notice that on December 16, 1986, Arkansas Power & Light Company tendered for filing a compliance report showing the final settlement rate schedule and revenue comparisons which were inadvertently omitted from the October 6, 1986 filing in FERC Docket No. ER81-577.

Comment date: January 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power and Light Company

[Docket No. ER87-154-000]

Take notice that on December 12, 1986, Florida Power and Light Company ("FPL") tendered for filing two Agreements entitled: (1) Stanton Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency ("Stanton Transmission Agreement"); and (2) Stanton Tri-City Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency ("Stanton Tri-City Transmission Agreement") referred to as "Transmission Agreements". Under the Transmission Agreements, FPL has agreed to provide transmission service for each FMPA Participating Member's entitlement share of FMPA's ownership interest in Orlando Utilities Commission ("OUC") Curtis H. Stanton Energy Center Unit One ("Stanton No. 1"), a coal fired steam electric power plant being constructed by OUC. The FMPA Participating Members under the Stanton Transmission Agreement are: City of Homestead, Florida; Fort Pierce Utilities Authority; City of Lake Worth, Florida; City of Starke, Florida; and City of Vero Beach, Florida. The FMPA Participating Members under the Stanton Tri-City Transmission Agreement are City of Homestead, Fort Pierce Utilities Authority and Utility Board of the City of Key West, Florida.

The rates for service under the Transmission Agreements will be the rates provided under the "Delivery Service Agreement Between Florida Power and Light Company and the Florida Municipal Power Agency" (Rate Schedule FERC No. 72).

Service under Transmission Agreements is scheduled to commence on the commercial operation of Stanton No. 1 (estimated to be July 1, 1987). However, FMPA has requested and FPL has agreed to file the above-mentioned Agreements at the present time. FPL, therefore, requests a waiver of the Commission's regulation (18 CFR Section 35.3(a)) to permit the Transmission Agreement to be filed more than 120 days prior to the initiation of service. Accordingly, FPL is authorized to represent that FMPA supports this request for a waiver.

Copies of this filing were served upon FMPA, the FMPA Participating Members and the Florida Public Service Commission.

Comment date: January 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Power & Light Company

[Docket No. ER85-756-001]

Take notice that on November 26, 1986, Pacific Power & Light Company (Pacific) tendered for filing a compliance report summarizing the effects of the Commission's Order Accepting Rates for Filing Subject to Refund or Adjustment, and Granting Intervention under Docket No. ER85-756-001, and dated August 1, 1986.

Comment date: January 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Potomac Electric Power Company

[Docket No. ER87-179-000]

Take notice that on December 19, 1986, Potomac Electric Power Company (Pepco), 1900 Pennsylvania Avenue, N.W., Washington, D.C. 20068, submitted for filing an amendment to its agreement for sale and purchase of electric power and energy for sales to its only wholesale customer, Southern Maryland Electric Cooperative, Inc. (Smeco) under Rate Schedule FERC No. 34; the amendment, which has been agreed to and concurred in by Smeco, includes a rate reduction from otherwise effective rate levels for 1987 of $1.787 million to recognize the effects of the Tax Reform Act of 1986.

The amendment has been preconditioned by approval of its terms and acceptance without suspension with a proposed effective date of January 1, 1987.

The applicant requests waiver of the 60 day notice provision in 18 CFR 35.3(a).

Comment date: January 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER85-608-001]

Take notice that on October 23, 1986, Public Service Company of New Mexico (PNM) tendered for filing a compliance report regarding pre-commercial energy from Palo Verde Nuclear Generating Station (PVNGS) unit as required in Paragraph (F) of the Commission's September 6, 1985, Order.

Comment date: January 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Indiana Gas and Electric Company

[Docket No. ER87-182-000]

Take notice that Southern Indiana Gas and Electric Comapny ("the Company") on December 22, 1986, tendered for filing proposed changes in its Supplement A to the Federal Energy Regulatory Commission Rate Schedules No. 33, 21, 24, 25 and 29, which represent, respectively, Interconnection Agreements with Big Rivers Electric Corporation, Public Service Company of Indiana, Louisville Gas and Electric Company, Indianapolis Power and Light Company and Alcoa Generating Corporation. The proposed changes would increase transmission or purchase and resale service charges for such services performed by the Company, other than economic energy transactions, from a limit of 2.5 mills/Kwh to a charge for wheeling power at a 100% load factor of 2.19 mills demand plus 1.0 mills energy and a charge for wheeling power at less than a 100% load factor of $1.60 per Kw demand plus 1.0 mills energy, for transactions under the listed Interconnection Agreements. The increase is requested to become effective on April 1, 1987. The affected companies are those listed as parties to the Interconnection Agreements.

The reason for the proposed changes is to bring Company's charges for transmission or purchase and resale services up to a point where it can realize a reasonable return on the services based on a cost of service standard.

Copies of the filing have been served upn the affected companies named above.

Comment date: January 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Utah Power & Light Company

[Docket No. ER87-178-000]

Take notice that on December 19, 1986, Utah Power & Light Company ("Company") tendered for filing Bonneville Power Administration's (BPA) written report dated November 26, 1986, which determines an Average System Cost (ASC) of 42.26 mills per kWh for the Company's Idaho Jurisdiction.

Comment date: January 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

10. The Washington Water Power Company

[Docket No. ER86-714-000]

Take notice that on November 26, 1986, the Washington Water Power Company (Washington) tendered for filing copies of an amendment to its filing which was tendered on September 22, 1986 (Docket No. ER86-714-000) of a Firm Capacity and Energy Agreement dated August 1, 1986 with Puget Sound Power & Light Company. The amendment to the filing clarifies rates for both the Initial Term (August 1, 1991-June 30, 1993).

Washington requests that the amendment to the filing be accepted and that a filing date be assigned by the Commission.

Comment date: January 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard paragraphs: E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-144 Filed 1-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-181]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Columbia Gas Transmission Corporation and Columbia Gulf Transmission Co.); Order Granting Rehearing for Further Consideration

Issued: December 30, 1986.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On December 3, 1986, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company jointly filed a timely request for rehearing in the above-captioned proceeding. Rehearing of the order issued November 5, 1986, is granted solely with respect to the disposition of the Columbia companies' petition for the purpose of affording the Commission additional time to consider the request for rehearing. Pursuant to Rule 713(b) of the Commission's Procedural Rules, no answer to this order, or to the request for rehearing, will be entertained.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-145 Filed 1-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Howell Petroleum Corp.), Order Denying Rehearing

Issued: December 30, 1986.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve

Howell Petroleum Corporation has filed a timely request for rehearing of the Commission's order issued in *Howell Petroleum Corporation*, 36 FERC ¶ 61,074 (July 22, 1986). We will deny rehearing.

Background

Howell involved an agreement, signed on June 1, 1985, that gave Southern Natural Gas Company the "option, but not the obligation" to purchase gas. The agreement also provided that, if requested in writing, Southern would release the gas and transport it for sale by Howell to Louisiana Industrial Gas Supply System, or other third-party purchasers, for their system supply. Southern's agreement to transport gas in the June 1 agreement was conditioned specifically upon the execution of a transportation agreement between

Southern and the third-party purchasers. The June 1 agreement did not specify the third-party purchasers or delivery points for the transportation service. On February 13, 1986, Howell requested that Southern release its gas purchases and transport the gas to SNG Trading Inc. and EnTrade Corporation, or both.

We found that the June 1 agreement did not commit Southern to purchase the gas. We also found that since the June 1 agreement did not contemplate transportation until the execution of a separate agreement and that "[i]nasmuch as Howell did not request transportation until February 13, 1986, presumably a transportation agreement was not executed prior to October 9, 1985." Finally, we noted that SNG and EnTrade were marketers, and that "even if the later sales agreement had been executed timely, the transaction still would not have qualified for transitional treatment because there is no written agreement executed on or before October 9, 1985, evidencing an appropriate destination or end-use of the gas." On the basis of these findings, we denied Howell's request for waiver of the transitional provisions of Order No. 436[1] because Howell did not meet the test announced in *CLARCO Gas Company, Inc.*, 35 FERC ¶ 61,339 (1986).

In its request for rehearing, Howell contends that it meets the *CLARCO* standard. Howell states that it entered into a written sale and transportation agreement on June 1, 1985, that it constructed significant facilities prior to October 9, 1985, and that the "transaction for which waiver was sought was of a type which qualifies for transitional treatment." Howell maintains that "[t]he fact that the June 1 [a]greement provides for the purely ministerial execution of a separate transportation agreement with Southern after a specific [s]ection 311-eligible transportation customer is identified does not mean that the June 1 [a]greement is not a transportation agreement, nor does it negate Southern's June 1, 1985 commitment to provide [s]ection 311 transportation." In support of its position, Howell claims that there are inconsistencies between our decisions in *Howell* and in several fact patterns in *CLARCO i.e.*, North Central Public Service Company, Endevco, Inc., Creole Gas Pipeline Corporation, and Archer-Daniels-Midland Company.

Discussion

The first part of the *CLARCO* test states that a waiver may be granted where evidence shows the existence of an agreement, entered into prior to October 9, 1985, between two or more parties that commits the parties to an element of the transaction (*e.g.*, the transportation of the gas, the sale of the gas to be transported, or storage of the gas before or after transportation). We conclude that the June 1 agreement does not meet the *CLARCO* test because the agreement did not commit the parties to transport or sell gas prior to October 9, 1985. The June 1 agreement is not a sales agreement that qualifies under the *CLARCO* standard because it provides Southern with only an option to purchase gas (which it is not required to exercise and did not in fact exercise prior to October 9), nor is it a transportation agreement that qualifies under the *CLARCO* standard because transportation was not contemplated until the execution of another agreement with a third-party purchaser (which agreement was not executed until after October 9). Consequently, we are not persuaded that Howell meets the *CLARCO* standard.

Our decisions in the *CLARCO* fact patterns cited by Howell are consistent with our holding in *Howell*. In each of the *CLARCO* fact patterns, an agreement was signed prior to October 9, 1985 that committed the parties to the transportation, sale, or storage of gas. Here, as stated above, the parties did not commit themselves to an element of the transaction before October 9.

Because we conclude that Howell does not meet the first part of the *CLARCO* test, we find it unnecessary to determine whether the transaction is of a type that qualifies for transitional treatment. Accordingly, Howell's request for rehearing is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-146 Filed 1-5-87; 8:45 am]

BILLING CODE 6717-01-M

[1] 33 FERC ¶ 61,007 (1985); FERC Statutes and Regulations, Regulations Preambles 1982-1985 ¶ 30,665 (1985).

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL-3136-5]

State and Local Assistance for Underground Injection Control Program; Underground Water Source Protection

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has determined that $1 million of the total funds available in fiscal year 1987 for grants under section 1443(b) of the Safe Drinking Water Act should be allocated for Class I and Class II well activities. The purpose of this notice is to inform the public of that decision and of the method used to allot the $1 million among the States.

FOR FURTHER INFORMATION CONTACT: Thomas E. Belk, U.S. Environmental Protection Agency, Office of Drinking Water, State Programs Division, Underground Injection Control Branch, WH-550E, 401 M Street SW., Washington, DC 20460; telephone 202-382-5530, (FTS) 382-5530.

SUPPLEMENTARY INFORMATION: In fiscal year 1987, EPA will make available $9.5 million under section 1443(b) of the Safe Drinking Water Act, 42 U.S.C. 300j-2(b), to support State underground injection control activities. Eight and one-half million dollars of the total will be distributed to the States using the existing allotment formula, which is based on State population, geographic area, and injection practices for all classes of wells. The remaining $1 million, however, will be allocated in a different manner to reflect the need for additional resources to address high priority Class I and Class II well programs. Specifically, EPA will reserve $250,000 for Class I activities and $750,000 for Class II activities and allot those funds in direct proportion to the number of Class I and Class II wells in each State.

The following table illustrates the allotments by State of the $1 million, according to the number of Class I and Class II wells in each State.

STATE ALLOTMENT OF ONE MILLION DOLLARS

	Class I well allotment	Class II well allotment	Total State allotment
Connecticut	0	0	0
Maine	0	0	0
Massachusetts	0	0	0
New Hampshire	0	0	0
Rhode Island	0	0	0
Vermont	0	0	0
New Jersey	0	0	0
New York	8,600	15,100	23,700
Puerto Rico	0	0	0
Virgin Islands	0	0	0
District of Columbia	0	0	0
Delaware	0	0	0
Maryland	0	0	0
Pennsylvania	0	31,100	31,100
Virginia	0	0	0
West Virginia	1,400	3,500	4,900
Alabama	900	1,100	2,000
Florida	37,400	400	37,800
Georgia	0	0	0
Kentucky	900	25,200	26,100
Mississippi	3,600	4,600	8,200
North Carolina	1,800	0	1,800
South Carolina	0	0	0
Tennessee	3,200	100	3,300
Illinois	5,400	62,700	68,100
Indiana	9,500	16,100	25,600
Michigan	14,900	8,300	23,200
Minnesota	0	0	0
Ohio	8,100	18,400	26,500
Wisconsin	0	0	0

STATE ALLOTMENT OF ONE MILLION DOLLARS—Continued

	Class I well allotment	Class II well allotment	Total State allotment
Arkansas	2,700	5,600	8,300
Louisiana	30,600	20,600	51,200
New Mexico	900	18,000	18,900
Oklahoma	5,000	78,200	83,200
Texas	68,000	246,900	314,900
Iowa	500	0	500
Kansas	25,700	68,600	94,300
Missouri	0	2,000	2,000
Nebraska	0	2,900	2,900
Colorado	900	4,600	5,500
Montana	0	6,700	6,700
North Dakota	1,400	2,900	4,300
South Dakota	0	200	200
Utah	0	3,100	3,100
Wyoming	3,200	27,300	30,500
American Samoa	0	0	0
Arizona	0	0	0
California	14,000	51,400	65,400
Commonwealth of the Marianas	0	0	0
Guam	0	0	0
Hawaii	0	0	0
Nevada	0	0	0
Trust Territories	0	0	0
Alaska	900	2,100	3,000
Idaho	0	0	0
Oregon	0	0	0
Washington	500	0	500
Indian Lands	0	22,400	22,400
Total	250,000	750,000	1,000,000

Dated: December 19, 1986.

Rebecca W. Hamner,

Acting Assistant Administrator for Water.

[FR Doc. 87-135 Filed 1-5-87; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-3139-2]

Science Advisory Board, Stratospheric Ozone Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Stratospheric Ozone Subcommittee of the Science Advisory Board on January 26-27, 1987. The meeting will be held at the U.S. Environmental Protection Agency in Room #2, South Conference Center, 401 M Street, SW., Washington, DC. The meeting will begin at 9:00 am on January 26 and will adjourn no later than 3:00 pm on January 27.

This is the second meeting of the Subcommittee. The purpose of the meeting is to enable the Subcommittee to continue its independent scientific review of the scientific adequacy of the assumptions, interpretations and conclusions of scientific information used by the U.S. Environmental Protection Agency in preparing its draft document "An Assessment of the Risks of Stratospheric Modification." The first day of the meeting will be held in public session; the Subcommittee will write its report on the second day and will meet in executive session. For further information on the draft document, contact Maria Tikoff, U.S. Environmental Protection Agency, PM-220, 401 M Street, SW., Washington, DC 20460, or by calling (202) 382-4036.

The Subcommittee meeting is open to the public. Any member of the public wishing to attend or obtain information about the meeting should notify Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer, Secretary, at (202) 382-4126. Opportunity will be provided for members of the public to make brief oral presentations to the Subcommittee, and a total time of one hour will be available for this purpose. Written scientific comments will be accepted in any form. Any member of the public wishing to present oral comments should notify Dr. Yosie no late than close of business on January 19, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

December 31, 1986.

[FR Doc. 87-137 Filed 1-5-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59233A-FRL-3138-8]

Certain Chemical; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME 87-3. The test marketing conditions are described below:

EFFECTIVE DATE: December 23, 1986.

FOR FURTHER INFORMATION CONTACT: Sally Sasnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-613, 401 M St., SW., Washington, DC 20460, (202) 382-3861.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME 87-3. EPA has determined that the test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any reasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME 87-3. Any person who may be exposed to the test marketing substance during processing or use must wear chemical safety glasses or goggles, impervious gloves, and protective clothing. Also, a bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME, and that any person who may be exposed to the test market substance during processing and use must wear the above-described protective equipment. In addition, the company shall maintain the following records until 5 years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance imported.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T 87-3.

Date of Receipt: November 7, 1986.

Notice of Receipt: November 25, 1986 (51 FR 42629).

Applicant: Nachem, Incorporated.

Chemical: (S) Reaction products of 4,4'-Isopropylidenediphenol sulfuric acid and acetic anhydride.

Use: (S) Tin-plating additive.

Production Volume: 8,000 lbs. (Import)

Number of Customers: One.

Worker Exposure: 1-3 workers, processing, dermal.

Test Marketing Period: Sixty days.

Commencing on: December 23, 1986.

Risk Assessment: EPA expects the test market substance to be a severe eye and skin irritant. However, EPA has determined that use of the protective equipment specified in this notice will address this concern. Therefore, the test

market substance will not present any unreasonable risk of injury to health.

EPA identified no significant environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activites will not present any reasonable risk of injury to health or the environment.

Dated: December 23, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-139 Filed 1-5-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59236A; FRL-3138-9]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME 87-5. The test marketing conditions are described below:

EFFECTIVE DATE: December 22, 1986.

FOR FURTHER INFORMATION CONTACT: John G. Davidson, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, RM. E-613, 401 M St., SW., Washington, DC 20460, (202-382-3373).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

TME-87-5 was submitted to EPA as a request to extend TME-85-31. TME-85-31 was granted on May 7, 1985 (50 FR 19228) and extended on May 19, 1986 (51 FR 19083). This extension expired on November 19, 1986. On December 5, 1986 the Company requested an additional extension. EPA designated the request for extension as a new test market exemption, TME-87-5.

EPA hereby approves TME-87-5. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. The production volume must not exceed the production volume specified in T-85-31 minus the production volume actually produced under that TME. In addition, the use and number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME 87-5. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T-87-5.

Date of Receipt: December 15, 1986.

Notice of Receipt: 51 FR 44943.

Applicant: Confidential.

Chemical: (G) Functional acrylate type polymer.

Use: (G) Industrial paint ingredient.

Production Volume: 26,000 kilograms.

Number of Customers: Four.

Worker Exposure: Manufacturer: dermal, a total of 20 workers, up to 8 hours/day up to 26 days/year.

Test Marketing Period: Three months.

Commencing on: December 22, 1986.

Risk assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the enviroment.

Dated: December 22, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-138 Filed 1-5-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Lindale National Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The Application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 26, 1987.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Lindale National Bancshares, Inc.,* Lindale, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Lindale National Bank, Lindale, Texas.

Board of Governors of the Federal Reserve System, December 30, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-128 Filed 1-5-87; 8:45 am]

BILLING CODE 6210-01-M

Mt. Vernon Bancorp, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 23, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Summer, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mt. Vernon Bancorp, Inc.*, Mt. Vernon, Illinois; to engage *de novo* through its subsidiary Mid States Financial Services Corporation, Mt. Vernon, Illinois, in tax preparation for individuals, farmers, and sole proprietorships, not including management consulting or tax planning, pursuant to § 225.25(b)(21) of the Board's Regulation Y. These activities will be performed in Jefferson, Williamson, Franklin, Marion and Clinton Counties, Illinois.

Board of Governors of the Federal Reserve System, December 30, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-129 Filed 1-5-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-040-07-4111-09]

Rock Springs District, Unita County, WY; Environmental Impact Statement

ACTION: Notice of Availability of the Hickey Mountain/Table Mountain Oil and Gas Field Development Draft Environmental Impact Statement (EIS), Unita County, WY.

SUMMARY: The Bureau of Land Management, in cooperation with the Forest Service, is issuing this notice to advise the public that the draft EIS for the Hickey Mountain/Table Mountain Oil and Gas Field Development proposal is now available. The draft EIS contains the analysis of potential impacts from the proposed development of an oil and sweet gas field in the Hickey Mountain/Table Mountain area of Unita County in southwestern Wyoming. This area contains public land administered by the Rock Springs District, Bureau of Land Management and land within the Wasatch/Cache National Forest.

DATES: Written comments on the analysis contained in the draft EIS, and the agency preferred alternative presented, will be accepted for 45 days following the date that the Environmental Protection Agency publishes the filing notice for this EIS in the **Federal Register**. Public meetings are not planned at this time.

ADDRESSES: Copies of the draft will be mailed to all known interested individuals. Copies will also be available to review at the following locations.

Written comments on the draft EIS should be addressed to:

Wally Mierzejewski, EIS Team Leader, Rock Springs District Office, BLM, P.O. Box 1869, Rock Springs, Wyoming 82902-1869

Forest Supervisor's Office, Wastch/Cache National Forest, 125 South State Street, Suite 8226, Salt Lake City, Utah 84138

Mountain View Ranger District, Washatch/Cache National Forest, P.O. Box 129, Mountain View, Wyoming 82339

FOR FURTHER INFORMATION CONTACT: For further information contact Wally Mierzejewski, Team Leader, at the Bureau of Land Management (address listed above) or phone (307) 382-5350.

SUPPLEMENTARY INFORMATION: The draft EIS analyzes the potential impacts of the proposed action for full field development (to include wells, access roads, pipelines, processing plants, power source, and abandonment) on 45,510 acres of national forest and public lands interspersed with State of Wyoming and private lands.

Component alternatives for access roads, processing plants, and transport of oil are analyzed as are the agency preferred alternative and the no action alternative.

Resources that could be affected by full field development include wildlife (particularly elk), sensitive and slumping soils, watershed, visual resources, transportation systems, vegetation, existing land uses, fisheries, social and economic resources, cultural and paleontological resources, human health and safety, air quality, and area geology.

Hillary A. Oden,

State Director.

[FR Doc. 87-3 Filed 1-5-87; 8:45 am]

BILLING CODE 4310-22-M

[ID-030-07-4322-15]

Idaho Falls District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Idaho Falls District Grazing Advisory Board.

SUMMARY: The Idaho Falls District Grazing Advisory Board will meet Tuesday, February 17, 1987. Notice of this meeting is in accordance with Pub. L. 92-463. The meeting will begin at 9 a.m. at the Idaho Falls District Office on 940 Lincoln Road, Idaho Falls, Idaho. The meeting is open to the public; public comments on agenda items will be accepted from 11:00 to 11:30 a.m.

The agenda items are: District Highlights, Noxious Weeds Control Program, Range Monitoring Program Update, Big Lost Decisions, Medicine Lodge Resource Management Agreement Update, Pocatello Resource Management Plan Update, and Project Funding.

Summary minutes of the meeting will be kept in the District Office and will be available for public inspection and reproduction during business hours (7:45 a.m. to 4:30 p.m.) within 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Lloyd H. Ferguson, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401; Telephone: (208) 529–1020.

Lloyd H. Ferguson,

District Manager.

December 29, 1986.

[FR Doc. 87–140 Filed 1–5–87; 8:45 am]

BILLING CODE 4310-GG-M

National Park Service

Sale of Water to Tusayan, AZ, by Grand Canyon National Park, AZ; Public Meeting

Notice is hereby given that a public meeting will be held at the following location and time for the purpose of receiving comments on the sale of Grand Canyon National Park water to the community of Tusayan, Arizona.

January 17, 1986, at 2 p.m.

Grand Canyon National Park, Shrine of the Ages Building, Grand Canyon, Arizona

Copies of an environmental assessment describing the potential alternatives to address this issue may be obtained from the Superintendent, Headquarters Building, Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona 86023, (602) 638–7701 or the Regional Director, Western Regional Office, 450 Golden Gate Avenue, P.O. Box 36063, San Francisco, California 94102, (415) 556–4196.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the aforementioned public meeting. Those not wishing to appear in person may submit written statements to the Superintendent concerning the environmental assessment. These written statements will be accepted until February 20, 1987.

Time limitations may make it necessary to limit the length of oral presentations and to restrict to one person the presentation made on behalf of an organization. A verbal statement may, however, be supplemented by a more complete written statement that may be submitted to the moderator at the time of presentation of the verbal statement. Written statements presented in person at the meeting will be considered by the National Park Service in the decision-making process. However, all materials presented at the meeting shall be subject to a determination by the moderator of appropriateness for inclusion in the meeting record. To the extent that time is available after presentation of verbal statements by those who have given the required advance notice, the moderator will give others present an opportunity to be heard.

After an explanation of the environmental assessment by a representative of the National Park Service, the moderator, insofar as possible, will adhere to the following order in calling for the presentation of verbal statements:

1. Governor of the State or his representative.
2. Members of Congress.
3. Members of the State Legislature.
4. Official representatives of the counties in which the national park is located.
5. Officials of other Federal agencies or public bodies.
6. Organizations in alphabetical order.
7. Individuals in alphabetical order.

The meeting will be recorded for documentation purposes only and will not be transcribed for dissemination.

W. Lowell White,

Acting Director, Western Region.

[FR Doc. 87–168 File 1–5–87; 8:45 am]

BILLING CODE 4310-70-M

Martin Luther King, Jr., National Historic Site Advisory Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Advisory Commission Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. at the following location and date.

DATE: January 28, 1987.

ADDRESS: The Martin Luther King, Jr. Center for Non-Violent Social Change, Inc., Freedom Hall, Room 261, 449 Auburn Avenue, NE., Atlanta, Georgia 30312.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue, N.E., Atlanta, Georgia 30312, Telephone (404) 331–5190.

SUPPLEMENTARY INFORFMATION: The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult and advise with the Secretary of the Interior or his designee on matters of planning and administration of the Martin Luther King, Jr. National Historic Site. The members of the Advisory Commission are as follows:

Mr. William Allison, Chairman
Mr. John H. Calhoun, Jr.
Dr. Elizabeth A. Lyon
Mr. C. Randy Humphrey
Mrs. Christine King Farris
Mr. Handy Johnson, Jr.
Mr. James Patterson
Mrs. Valena Henderson
Mrs. Millicent Dobbs Jordan
Mr. John W. Cox
Reverend Joseph L. Roberts, Jr.
Mrs. Coretta Scott King, Ex-Officio Member
Director, National Park Service, Ex-Officio Member

The matters to be discussed at this meeting will include:

(1) The update on park accomplishments during the calendar year of 1986.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: December 23, 1986.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 87–166 Filed 1–5–87; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware National Scenic and Recreational River; Meeting

AGENCY: Upper Delaware Citizens Advisory Council, National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: January 9, 1987 7:00 p.m.

Inclement weather reschedule date: January 12, 1987.[1]

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware Scenic and Recreational River, Drawer C, Narrowsburg, NY 12764–0159. (717) 729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U. S. C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include voting on a resolution to support Upper Delaware Management Plan.

Any member of the public may file with the council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box, 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1¾ miles North of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 87–167 Filed 1–5–87; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 27, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 21, 1987.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Tulare County

Porterville, *Zalud House*, 393 N. Hockett St.

FLORIDA

Duval County

Jacksonville, *Old Jacksonville Free Public Library*, 101 E. Adams St.

Nassau County

Fernandina Beach, *Original Town of Fernandina Historic Site*, Roughly bounded by Towngate St., City Cemetery, Nassau, Marine, and Ladies Sts.

GEORGIA

Lamar County

Barnesville, *Carnegie Library of Barnesville*, Library St.

LOUISIANA

Claiborne Parish

Haynesville vicinity, *Burnham, J.W., House*, Off US 79

Homer, *Todd, Dr. John W., House*, 306 Pine St.

DeSota Parish

Mansfield, *DeSota Parish Courthouse*, Adams and Texas Sts.

Rapides Parish

Alexandria, *Walker, Morgan, House*, 2400 Horseshoe Dr.

MINNESOTA

Steele County

Owatonna, *Pillsbury Academy Campus Historic District*, 315 S. Grove St.

MISSISSIPPI

Rankin County

Armstrong Site (22RA576)

MONTANA

Beaverhead County

Dillon, *Barrett, Martin, House*, 733 S. Pacific

Flathead County

Kalispell, *Ringleberg, Cornelius, House*, 1028 Third Ave. W.

Lewis & Clark County

Lincoln, *Lincoln Community Hall*, MT 200

Madison County

Sheridan, *Christ Episcopal Church and Rectory*, SW jct. of Poppleton and Main Sts.

Stillwater County

Columbus, *Jacobs, Michael, House*, 4 W. First Avenue N.

NEW JERSEY

Mercer County

Princeton, *Jugtown Historic District*, Nassau and Harrison Sts., Harrison St. N., and Evelyn Pl.

PENNSYLVANIA

Chester County

Downingtown, *Downingtown Log House (Proposed Move)*, 15 E. Lancaster Ave.

TEXAS

Navarro County

Corsicana, *Temple Beth-El*, 208 S. 15th St.

WEST VIRGINIA

Marshall County

Moundsville, *Ferrell—Holt House*, 609 Jefferson Ave.

[FR Doc. 87–169 Filed 1–5–87; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30954]

CSX Transportation, Inc. Trackage Rights Exemption Granted by Baltimore and Ohio Chicago Terminal Railroad Co.

The Baltimore and Ohio Chicago Terminal Railroad Company (BOCT) will agree to grant local trackage rights to CSX Transportation, Inc. (CSX) between 51st Street and 22nd Street in Chicago, IL, a distance of approximately 3.2 miles. The trackage rights will be effective on December 28, 1986.

This notice is filed under 49 CFR 1180.2(d)(3) and (7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: December 23, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–152 Filed 1–5–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub–187X)]

CSX Transportation, Inc.; Exemption for Abandonment in Citrus, Hernando, and Pasco Counties, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts CSX Transportation, Inc., from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon a 29.68-mile line of railroad in Citrus, Hernando, and Pasco

Counties, FL, subject to standard employee protective conditions.

DATES: This exemption will be effective on February 5, 1987. Petitions to stay must be filed by January 16, 1987, and petitions for reconsideration must be filed by January 26, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 187X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Patricia Vail, 500 Water Street, Jacksonville, FL 32202

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area), or Toll-free (800) 424–5403.

Decided: December 19, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley concerned in the result with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87–153 Filed 1–5–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notifications; Emhart Glass Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98–462 (The Act"). Emhart Glass Research, Inc. has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing an amendment made to the partnership agreement of International Partners In Glass Research. Specifically, by an amendment approved in writing by all partners on or about September 1, 1986, the partnership agreement was amended to modify the licensing policies set forth in the original partnership agreement.

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The notification identifying the parties to the project and describing in general terms the nature and objectives of that project is published at 50 FR 14175 (Apr. 10, 1985).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87–18 Filed 1–5–87; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Arizona State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator-OSHA) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(e) of the Act and 29 CFR Part 1902. On October 29, 1974, notice was published in the **Federal Register** (39 FR 39037) of the approval of the Arizona plan and the adoption of Subpart CC to Part 1952 containing the decision.

The Arizona plan provides for the adoption of Federal standards as State standards after public hearing. In response to Federal Standard changes, the State has submitted its changes by letter, with attachments, dated August 7, 1986, from A.D. Horton, Jr., Director, to Russell B. Swanson, Regional Administrator, and incorporated as part of the plan. The state standards reflect Federal standard changes to 29 CFR 1910.106, Flammable and Combustible Liquids (September 11, 1985, 50 FR 36992); 29 CFR 1910.1029, Coke Oven Emissions (September 13, 1985, 50 FR 37352); 29 CFR 1910.1047, Ethylene Oxide, Labeling Requirements (October 11, 1985, 50 FR 41941); and 29 CFR 1910.1043, Cotton Dust (December 13, 1985, 50 FR 51120). These standards are contained in the Arizona Occupational Safety and Health Standards, which were adopted after public hearings and the resolution adopted by the Industrial Commission of Arizona consistent with their authority under the Arizona Occupational Safety and Health Act of 1972.

2. *Decision.* Having reviewed the State submission in comparison with Federal standards, it has been determined that the State standards are identical to the comparable Federal standards and accordingly are approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11349, San Francisco, California 94102; and Director, Division of Occupational Safety and Health, 800 W. Washington, Phoenix, AZ 85007; and Directorate of Federal/State Operations, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Arizona plan as a proposed change and making the OSHA Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law, which included public comment, and further public participation would be repetitious.

The decision is effective January 6, 1987.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at San Francisco, California this 27th Day of October 1986.

Russell B. Swanson,

Regional Administrator.

[FR Doc. 87–105 Filed 1–5–87; 8:45 am]

BILLING CODE 4510–26–M

Nevada State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health

(hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(e) of the Act and 29 CFR Part 1902. On January 4, 1974, notice was published in the **Federal Register** (39 FR 1008) of the approval of the Nevada plan and the adoption of Subpart W to Part 1952 of Title 29 containing the decision. The Nevada plan provides for the adoption of Federal standards as State standards by reference.

By letter dated November 14, 1986, from Nancy C. Barnhart to Raymond J. Owen and incorporated as part of the plan, the State submitted State standard revisions identical to 29 CFR 1910.1001, Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite (June 20, 1986, 51 FR 22612); and 29 CFR Part 1926, Subpart K, Electrical Standards for Construction (July 11, 1986, 51 FR 25294). These standards are contained in the Division of Occupational Safety and Health Standards for General Industry and Construction, respectively. The subject standards, 29 CFR 1910.1001, Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite (51 FR 22612) and 29 CFR Part 1926, Subpart K, Electrical Standards for Construction (51 FR 25294) were adopted by reference on July 21, 1986 and October 9, 1986 pursuant to Nevada State law, section 618.295.

2. *Decision.* Having reviewed the State submission in comparison with Federal standards, it has been determined that the standards are identical to the Federal standards and accordingly are approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11349, San Francisco, California 94102; and Director, Division of Occupational Safety and Health, 1370 South Curry Street, Carson City, Nevada 89710, and Directorate of Federal-State Operations, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Nevada State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with procedural requirements of State law and further participation would be unnecessary.

This decision is effective Janaury 6, 1987.

(Sec. 18, Pub. L. 91-596, 84 State. 1608 (29 U.S.C. 667))

Signed at San Francisco, California this 27th day of November, 1986.

Russell B. Swanson,

Regional Administrator.

[FR Doc. 87-106 Filed 1-5-87; 8:45am]

BILLING CODE 4510-26-M

Oregon State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, Notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards, the State has submitted by letter dated September 13, 1984, from William J. Brown, Director, Workers' Compensation Department, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State rules comparable to 29 CFR Part 1918, Longshoring, as published in the **Federal Register** (37 FR 22530) on October 19, 1972.

The State adopted an "at least as effective" Longshoring Standard (OAR 437-74) on April 2, 1976, which received approval in the **Federal Register** at 41 FR 43486, dated October 1, 1976. Subsequently the State revoked its standard and withdrew from the Longshoring issue on May 25, 1977 except for coverage of public sector employers by application of its general industry standards. Federal Register approval for the withdrawal appeared at 42 FR 40268, dated August 9, 1977. In accordance with Pub. L. 91-596, section 18, paragraph (b), Oregon's Operational Agreement under its State Program was amended accordingly.

On July 23, 1984, a Notice of Proposed Amendment of Adoption of OAR 437-308, Longshoring, was mailed to persons on the State's mailing list as established pursuant to OAR 436-90-505, and to those on the Department's mailing list as interest appeared. The Notice was published in the State Administrative Rules Bulletin on August 1, 1984. Written comments were received from the Port of Portland authorities.

Based on these comments, wording of Rule 437-308-310(1) was clarified. No other comments or request for public hearing were received. These rules were adopted on August 31, 1984, effective September 1, 1984.

Regional review of the State's readoption of Longshoring, revealed that in spite of the State intent that its standard only apply to the public sector, the scope section did not specifically explain the standard's limitation to public sector coverage. The submission was returned to the State on October 9, 1984, for correction action. Subsequently the proposed amendment to correct the scope of the standard was mailed to those on the Workers' Compensation Department mailing list on December 31, 1984, as established pursuant to OAR 436-90-505 and to those on the Department's distribution mailing list as interest appeared. The action failed to elicit comments or request for a public hearing. The corrected amendment was adopted on February 22, 1985; and became effective March 1, 1985.

On July 10, 1985, the State resubmitted the original Longshoring standard and the amendment correcting the previously identified error in the scope.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard, it has been

determined that the State standard is identical to the comparable Federal standard, except that consistent with the State's jurisdiction the Longshoring Standard covers only the public sector. Other differences are the incorporation of the State's rules numbering system, references to other State rules, and editorial changes. The above State standard has been reviewed and compared with the relevant Federal standard. OSHA has determined that the State standard is at least as effective as the comparable Federal standard, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal standards are minimal and that the standards are thus substantially identical. OSHA therefore approves this standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Worker's Compensation Board, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Room N-3476, 200 Constitution Avenue, NW., Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause with may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The State's rules are substantially indentical to those amended by the Federal standard which were promulgated in accordance with Federal law including meeting requirements for public participation. The standards were adopted in accordance with the procedural requirement of State law which included opportunity for public comment and further public participation would be repetitious.

This decison is effective January 6, 1987.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington this 1st day of August 1986.

James W. Lake,

Regional Administrator.

[FR Doc. 87-107 Filed 1-5-87; 8:45 am]

BILLING CODE 4510-26-M

Washington State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are as least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated July 1, 1985, from G. David Hutchins, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment identical to the amended Federal standard, 29 CFR 1910.106(g)(2) and (g)(3)(vi), Hazardous Materials; Attendant Exemption and Latch-open Devices, as published in the **Federal Register** (47 FR 39114) on September 7, 1982. The Washington Hazardous Materials Amendment is contained in WAC 296-24-3305. It was adopted on November 30, 1983, and became effective on December 30, 1983, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08 as ordered and transmitted under Washington Administrative Order Number 83-34. This amendment modifies the original at least as effective State standard that was published in the **Federal Register** (42 FR 40277) on August 9, 1977.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard amendment, it has been determined that the State standard amendment is at least as effective as the comparable Federal standard amendment, as required by section 18(c)(2) of the Act. OSHA has also determined that there are no differences between the State and Federal standards amendments and that the standards amendments are identical. OSHA therefore approves this standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary. The State's Hazardous Materials Standard continues to be as effective as the Federal standard.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Room N3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable law. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective January 6, 1987.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington this 28th day of July 1986.

James W. Lake,

Regional Administrator.

[FR Doc. 87-108 Filed 1-5-87; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee, Closed Meeting

A meeting of the National Security Telecommunications Advisory Committee (NSTAC) will be held on February 18, 1987. The business session of the meeting will be held at the Department of State in the Loy Henderson Conference Room, 2201 C Street, NW., Washington, DC. An executive session of the meeting will be held in the Indian Treaty Room of the Old Executive Office Building, Washington, DC.

Business Session:

—Call to Order
—Welcome from State Department
—Government response to NSTAC VI Recommendations
—Report from Industry
—NSTAC VII Deliberations
—Closing Remarks
—Adjournment

Executive Session

—Call to Order
—Discussion with Government Officials
—NSTAC Closing Discussion
—Adjournment

Due to the requirement to discuss classified information in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202-692-9274) or write the Manager, National Communications System, Washington, DC 20305.

Charles F. Noll,

Captain, U.S. Navy Assistant Manager NCS Joint Secretariet.

[FR Doc. 87-130 Filed 1-5-87; 8:45 am]

BILLING CODE 3610-05-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325 and 50-324]

Carolina Power & Light Co. (Brunswick Steam Electric Plant, Units 1 and 2); Exemption

I

Carolina Power & Light Company (the licensee) is the holder of Facility Operating License Nos. DPR-71 and DPR-62 which authorize operation of the Brunswick Steam Electric Plant, Units 1 and 2, respectively (Brunswick or the facilities). These licenses provide, among other things, that the facilities are subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are boiling water reactors located at the licensee's site in Brunswick County, North Carolina.

II

Section 50.48 of 10 CFR Part 50 requires that licensed operating reactors be subject to the requirements of Appendix R of 10 CFR Part 50. Appendix R contains the general and specific requirements for fire protection programs at licensed nuclear facilities. On February 17, 1981, the fire protection rule for nuclear power plants, 10 CFR 50.48 and Appendix R, became effective. This rule required all licensees of plants licensed prior to January 1, 1979, to submit by March 19, 1981: (1) plans and schedules for meeting the applicable requirements of Appendix R, (2) a design description of any modifications proposed to provide alternative safe shutdown capability pursuant to paragraph III.G.3 of Appendix R, and (3) exemption requests for which the tolling provision of § 50.48(c)(6) was to be invoked.

By letter dated March 6, 1981, the licensee requested exemptions from section III.G.3 of Appendix R to 10 CFR 50 to the extent that it requires the installation of a fixed fire extinguishing system in the Control Room and the cable spreading rooms of both units. By letter dated June 30, 1982, the licensee requested additional exemptions from section III.G of Appendix R to 10 CFR 50. By letters dated September 3, 1982, and October 1, 1982, the licensee provided additional information on these exemption requests. In January 1983, the licensee committed to provide clarifying information to explain why these exemptions were needed. We met with the licensee on January 5, 1983 and February 9, 1983 to resolve 44 exemption requests. By letter dated January 31, 1983 we conclude that 44 exemptions could not be approved based on the information provided.

By letter dated May 2, 1983 the licensee provided additional information regarding the exemption requests and the schedule for performing an alternate shutdown study. By letter dated July 27, 1983, an exemption was issued for seven of the exemption requests and 57 other exemption requests were denied. The NRC indicated in the January 31, 1983 letter to the licensee transmitting the Draft Safety Evaluation and confirmed in the July 27, 1983 letter, that the licensee was given 6 months to provide the description of the modifications for the alternate shutdown capability. This was to include modifications to the diesel generator building equipment hatches, installation of suppression system in the cable spreading room, a preliminary description of the alternate shutdown modification within 6 months and a final alternate shutdown report in 9 months. By letter dated April 24, 1984, as supplemented on December 21, 1984 and October 28, 1985, the alternate shutdown report was submitted along with 11 exemption requests.

By the submittal dated April 24, 1984, as supplemented, the licensee requested exemptions from the requirements in III.G and J of Appendix R to 10 CFR 50 as follows:

7.2.1 Exemption from III.G.2 provisions for safe shutdown separation features on −17, 20, and 50 feet elevations in Unit 1 Reactor Building.

Justification is based upon automatic detection and suppression, separation zone considerations, physical separation of redundant trains, water curtain, venting paths precluding stratification, use of fire stop and 1-hour barriers on exposed cables, and addition of sprinklers.

7.2.2 Exemption from III.G.2 provisions in Unit 1 ECCS room for safe shutdown separation features and for unrated penetrations.

Justification is based upon low fire potential; lack of ignition sources; electrical cables inside conduit; sufficient propagation retardancy; adequate separation and detection; installation of warp, fuses, and a "quick respone" sprinkler head; an inerted primary containment; and features of existing seals.

7.2.3 Exemption from III.G.2 provisions for safe shutdown separation features on −17, 20 and 50 feet elevations in Unit 2 Reactor Building.

Justification is based upon automatic detection and suppression, separation zone considerations, physical separation of redundant trains, water curtain, venting paths precluding stratification, use of fire stops and 1-hour barriers on exposed cables, and addition of sprinklers.

7.2.4 Exemption from III.G.2 provisions in Unit 2 ECCS room from safe shutdown separation features and for unrated penetrations.

Justification is based upon low fire potential; lack of ignition sources; electrical cables inside conduit; sufficient propagation retardancy; adequate separation and detection; installation of wrap, fuses, and a "quick response" sprinkler head; and inerted primary containment; and features of existing seals.

7.2.5 Exemption from III.G.2 provisions for safe shutdown system separation for the Diesel Generator Building basement.

Justification is based upon minimal personnel use of the basement; activities do not involve combustibles; fixed combustibles are self extinguishing; the proposed Halon automatic suppression system combined with the existing automatic suppression system will prevent a fire from damaging redundant trains or diesel pad seals; redundant alarms would mobilize the fire brigade promptly; and stairwells provide protected staging areas for initiating fire response activities.

7.2.6 Exemption from III.G.2 provisions for safe shutdown system separation (intervening combustibles) for Service Water Building, elevations 4 feet and 20 feet.

Justification is based upon lack of ignition sources; minimal fixed combustibles; existing suppression, detection, hose stations, and separation; and installation of barriers.

7.2.7 Exemption for III.G. 2 provisions as necessary from full area suppression for Diesel Generator building, fire area DG–8.

Justification is based upon small amount of fixed combustibles; unlikelihood of cable ignition; fire detection; and installation of rated barriers.

7.2.8 Exemption from III.G.3 provisions for fixed suppression requested for Turbine Building.

Justification is based upon automatic detection and early brigade response; existing automatic suppression over certain equipment and lack of ignition sources; ceiling penetrations providing venting paths; the ability to achieve safe shutdown; and that additional suppression would not enhance safe shutdown capability.

7.2.9 Exemption from III.G.3 provision for suppression in any "area, room, or zone" where alternative shutdown capability is provided for rooms in the control and diesel generator buildings.

Justification is based upon automatic detection alarmed in the control room; availability of manual fire fighting equipment; alternative shutdown capability is provided; low fire hazards; the control room suppression exemption; and installation of suppression in two rooms in the Control Building.

7.2.10 Exemption from III.G.3 provisions for suppression and detection for the East Yard.

Justification is based upon constant patrols and closed circuit TV surveillance; the dike surrounding the diesel fuel tank; combustion products venting to atmosphere; low probability of radiant energy damage to CST level switches and AC power feeds; and alternative shutdown capability is provided to the RCIC logic circuits and for a fire in manholes.

7.2.11 Exemption from emergency lighting provisions of III.J for the East Yard.

Justification is based upon ready availability of hand lights that will be adequate for traversing East Yard and reading gages; also, additional modifications would not enhance safe shutdown capability.

Section III.G of Appendix R to 10 CFR 50 requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

a. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide a fire resistance equivalent to that required of the barrier;

b. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area, and;

c. Enclosure of cables and equipment and associated nonsafety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

If these conditions are not met, section III.G.3 requires an alternative shutdown capability independent of the fire area of concern. It also requires that a fixed suppression system be installed in the fire area of concern if it contains a large concentration of cables or other combustibles. These alternative requirements are not deemed to be equivalent. However, they provide equivalent protection for those configurations in which they are accepted.

Section III.J of Appendix R requires battery-powered emergency lighting be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

By letter dated October 30, 1986, the licensee provided information relevant to the "special circumstances" finding required by revised 10 CFR 50.12(a) (See 50 FR 50764). Previously, the licensee has stated that the existing and proposed fire protection features at the Brunswick facility accomplish the underlying purpose of the rule. In the October 30, 1986 letter, the licensee addressed the additional costs that would be incurred in achieving verbatim compliance with Appendix R to 10 CFR 50 in the absence of the requested exemptions. Because of the plant configuration, compliance would require modifications to the basic plant structures. In addition, the licensee would have to install a dedicated shutdown capability as delineated in section III.L of Appendix R. The installation of a dedicated shutdown system would require longer plant outages to facilitate connection of the dedicated system to existing plant structures and systems. Even with a dedicated shutdown capability, considerable expenditures would be required to protect associated circuits. The licensee has estimated that the cost of installing the dedicated shutdown system alone could range from 35 to 45 million dollars based on a survey of other utilities and industry estimates. The licensee states that even without a detailed cost comparison, it is evident that the cost of installing a dedicated shutdown system would significantly exceed the cost of installing the proposed modifications and alternate shutdown capability and that no corresponding increase in fire protection capability would be achieved. The licensee therefore concludes that "compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted."

The staff agrees with the licensee's determination and therefore concludes that "special circumstances" exist for the licensee's requested exemptions in that application of the regulations in these particular circumstances is not necessary to achieve the underlying purpose of Appendix R to 10 CFR Part 50 and that undue costs would be imposed if the exemptions were not granted. See 10 CFR 50.12(a)(2) (ii) and (iii).

The licensee requested the above exemptions with the justification provided. We have evaluated the licensee's request and the associated analysis and justification and have provided the details in our related Safety Evaluation issued concurrent with this Exemption. Based on our evaluation, we concluded that the level of protection for Brunswick is equivalent to the technical requirements of section III.G and J of Appendix R for certain exemption requests, and therefore these requested exemptions 7.2.1 through 7.2.11 should be granted. We have determined that exemption for the Control Building Extended (fire area 23 E), is not necessary. This is a part of exemption request 7.2.9.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2) (ii) and (iii), are present justifying the exemption, namely that application of the regulation in the particular circumstances would not serve the underlying purpose of the rule and is not necessary to achieve the underlying purpose of the rule—to ensure the ability to effect safe shutdown of the

plant—and would impose undue costs. Safe shutdown could be effected if a fire occurred in any of the areas for which an exemption has been requested because of alternative fire protection features provided and the existence of redundant shutdown systems.

Accordingly, the Commission hereby grants the exemptions from Appendix R of 10 CFR Part 50 as described below:

7.2.1 Exemption from III.G.2 provisions for safe shutdown separation features on −17, 20, and 50 feet elevations in Unit 1 Reactor Building.

7.2.2 Exemption from III.G.2 provisions in Unit 1 ECCS room for safe shutdown separation features and for unrated penetrations.

7.2.3 Exemption from III.G.2 provisions for safe shutdown separation features on −17, 20 and 50 feet elevations in Unit 2 Reactor Building.

7.2.4 Exemption from II.G.2 provisions in Unit 2 ECCS room for safe shutdown separation features and for unrated penetrations.

7.2.5 Exemption from III.G.2 provisions for safe shutdown system separation for the Diesel Generator Building basement.

7.2.6 Exemption from III.G.2 provisions for safe shutdown system separation (intervening combustibles) for Service Water Building, elevations 4 feet and 20 feet.

7.2.7 Exemption from III.G.2 provisions as necessary for full area suppression for Diesel Generator building, fire area DG–8.

7.2.8 Exemption from III.G.3 provisions for fixed suppression requested for Turbine Building.

7.2.9 Exemption from III.G.3 provision for suppression in any "area, room, or zone" where alternative shutdown capability is provided for rooms in the control and diesel generator buildings (fire area 23 E not necessary to include).

7.2.10 Exemption from III.G.3 provisions for suppression and detection for the East Yard.

7.2.11 Exemption from emergency lighting provisions of III.J for the East Yard.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on environment (51 FR 46736).

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 30th day of December 1986.

R. Wayne Houston,

Acting Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

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[Docket No. 50–289]

General Public Utilities Nuclear Corp., et al. (Three Mile Island Nuclear Station, Unit No. 1); Exemption

I

General Public Utilities Nuclear (GPUN) Corporation (the licensee) and three co-owners hold Facility Operating License No. DPR–50, which authorizes operation of the Three Mile Island Nuclear Station, Unit No. 1 (TMI–1) (the facility) at power levels not in excess of 2535 megawatts thermal. This license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission or the staff) now or hereafter in effect.

The facility is a pressurized water reactor located at the licensee's site in Dauphin County, Pennsylvania.

II

10 CFR 50.48, "Fire Protection," and Appendix R to 10 CFR Part 50, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979" set forth certain fire protection features required to satisfy the General Design Criterion related to fire protection (Criterion 3, Appendix A to 10 CFR 50).

Section III.G of Appendix R requires fire protection for equipment important to safe shutdown. Such fire protection is achieved by various combinations of fire barriers, fire suppression systems, fire detectors, and separation of safety trains (III.G.2) or alternate safe shutdown equipment free of the fire area (III.G.3). The objective of this protection is to assure that one train of equipment needed for hot shutdown would be undamaged by fire, and that systems needed for cold shutdown could be repaired within 72 hours (III.G.1).

Section III.J of Appendix R requires emergency lighting units with at least an eight-hour battery power supply be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

III

By letters dated October 30, 1984, February 1, 1985, November 7, 1985, May 17, 1986, July 22, 1986, August 19, 1986, October 22, 1986, and November 20, 1986, the licensee provided details of their fire protection program and requested approval of a number of exemptions from the technical requirements of sections III.G and III.J of Appendix R to 10 CFR 50. In subsequent correspondence dated July 22, 1986, and November 19, 1986, the licensee withdrew several of the previously requested exemptions. The Commission is denying some of the requested exemptions as set forth in its concurrently issued Safety Evaluation. A description of the remaining exemption requests and a summary of the Commission's evaluation follow.

1. III.G.2; exemption requested from installing automatic fire detection in area FH–FZ–2 (Fuel Handling Building at elevation 305 feet): The staff's principal concern with the level of protection in this area was that a fire might propagate undetected and damage redundant, shutdown-related systems. However, the locations within the area which contain most of the combustible material and in which transient combustibles would most likely be found are protected by an automatic fire suppression system. If a fire significant magnitude were to occur, the staff expects the suppression system to actuate. This would cause an alarm to be visually and audibly annunciated in the control room. The fire brigade would be subsequently dispatched and would complete fire extinguishment using manual fire fighting equipment. Pending actuation of the suppression system and the arrival of the brigade, a fire barrier would provide adequate passive protection to one division of shutdown-related cables. For those cables which have not been physically separated or protected, the licensee has stated that sufficient time is available to manually operate valves to reestablish flow paths (see Exemption 2). These manual actions would be taken in areas that are isolated from the effects of a fire either by physical barriers or by automatic fire suppression systems. On this basis, the staff concludes that the licensee's alternate fire protection configuration represents an equivalent level of fire safety to that achieved by compliance with section III.G.2.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The regulations require the installation of an automatic fire detection system to warn operators of a fire so that appropriate corrective action can be taken. The area of concern contains an automatic fire suppression system. A fire of sufficient magnitude would cause the fire suppression system to actuate which would in turn sound an alarm. Thus, the underlying purpose of the rule would be satisfied without installing an automatic fire detection system.

2. III.G.2; exemption requested to allow manual operation of certain valves and pumps in lieu of providing fire protection: The licensee identified a number of areas in which redundant cables and components associated with letdown valves, makeup valves, steam dump valves, steam supply valves, emergency feedwater valves, and the intermediate cooling water and nuclear service cooling water pumps are not protected per the fire protection options identified in section III.G.2. The licensee states that if a fire damages these cables, sufficient time exists to manually align the valves and to manually control the pumps so as to achieve and maintain safe shutdown conditions. The time periods within which the licensee must accomplish these actions vary from 20 minutes for certain emergency feedwater system valves to 240 minutes for certain valves in the makeup system. The minimum time frame to establish local control of the intermediate cooling water pumps and the nuclear service cooling water pumps is 30 minutes.

The technical requirements of Appendix R are not met in the subject areas because cables and components for certain shutdown-related valves and pumps are not provided with fire protection in accordance with the options identified in section III.G.

The staff has several concerns regarding the reliance on manual actions in lieu of physical protection of shutdown systems. The first is that plant operators may have to enter the fire area before it is reasonable to expect that habitable conditions may be restored after the fire. The licensee, in the July 22, 1986 submittal, identified a number of locations where safe shutdown can only be achieved by reentering the fire area to assure proper valve alignment. However, in no instance is it necessary to enter these areas before two hours after fire damage occurs. Although it is not possible to predict the nature and duration of a fire in any location, the staff expects that within one hour a fire would have been detected and controlled and near ambient conditions restored. This conclusion is based on the description of plant hazards and available protection as provided by the licensee in Revision 7 of the Fire Hazards Analysis Report (FHAR). The licensee's analyses indicated that an additional hour exists beyond the staff's assumptions. This results in a sufficient margin of safety to provide reasonable assurance that manual actions within the fire area can be achieved.

The staff was also concerned that fire damage to valve operators would prevent manual valve alignment. However, the licensee responded to this concern by stating, in the July 22, 1986 letter, that fire damage to valve operators will not prevent the valve operators from being manually turned.

A further staff concern is that because not all fire areas are physically separated from adjoining locations by continuous fire-rated construction, fire propagation through non-rated boundaries might prevent operators from performing manual operations. However, where fire area boundaries are not completely fire-rated, the licensee indicates that (1) the areas on one or both sides of the boundary are protected by an automatic fire suppression system, or (2) the boundary wall or floor/ceiling forms a continuous non-combustible barrier to the propogation of fire, or (3) the adjoining area into which fire may spread is not relief upon for safe shutdown.

An additional concern is that the post-fire shutdown procedures and available personnel are adequate for the tasks to be performed. The licensee responded that procedures will be prepared in conformance with staff fire protection guidance as provided in Generic Letters 81–12 and 86–10. The staff considers this response acceptable. However, the adequacy of these procedures will be confirmed during the Appendix R inspection.

The staff's remaining concern is that the manual actions required in locations outside the fire area could actually be accomplished within the maximum available time period stipulated by the licensee while a plant fire was underway. As previously stated, these time limits range from 20 minutes to 240 minutes. It is not possible to predict the nature of a fire event or the actions of plant operators during an emergency. However, the staff expects that a degree of uncertainty and confusion will exist and that time delays will occur in the implementation of manual actions. It is the staff's judgment that where manual actions, including valve alignment and pump control, are required less than 30 minutes after initial fire damage, an insufficient margin of safety exists to provide reasonable assurance that safe shutdown can be achieved and maintained. For those actions which must be taken beyond 30 minutes, the staff concludes that manual actions can be expected to be completed before an unrecoverable plant condition occurs. For those valves where manual action can be taken beyond 30 minutes, the staff concludes that the licensee's proposal represents an equivalent level of safety to that achieved by compliance with III.G.2.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the rule is to accomplish safe shutdown in the event of a single fire and maintain the plant in a safe condition. The rule requires fire protection for circuits and components associated with shutdown-related valves and pumps. However, certain valves and pump controllers can withstand the effect of a fire and still be manually operated. Sufficient time exists to allow this manual operation and maintain the plant is a safe shutdown condition. Thus, the underlying purpose of the rule is satisfied allowing manual operation of these components. Additionally, the licensee argues that providing additional protection features, as required by the regulations, would not result in a significant increase in the level of protection provided and would result in undue hardship and costs significantly in excess of those incurred by others similarly situated. These costs consist of additional engineering, procurement of materials, fabrication, and installation costs.

3. III.G.2; exemption requested to allow use of fire-rated cable in lieu of a fire barrier around certain shutdown-related circuits in the following areas: AB–FZ–4 (Penetration Area), ISPH–FZ–1 (Intake Screen Pumphouse), ISPH–FZ–2 (Intake Screen Pumphouse), and FH–FZ–1 (Fuel Handling Building Area): The technical requirements of Section III.G are not met in Areas AB–FZ–4, ISPH–FZ–1, ISPH–FZ–2, and FH–FZ–1 because certain shutdown-related cables delineated in the licensee's Revision 7 of the FHAR and May 17, 1986 letter are not protected by a one-hour fire-rated barrier and would not be free of damage after being subjected to a fire.

The staff's concerns with the use of the fire-rated cable outside of containment are as follows:

(a) Functional Capability

The staff was concerned that the cable would not perform its intended function when exposed to the effects of a fire. In response, by letter dated June 9, 1984, the licensee submitted the results of a fire test conducted by Underwriter's Laboratories, Incorporated. Representative samples of the cable were subjected to a one-hour fire endurance and hose stream test in accordance with the method in ASTM E–119. During the fire test and for a

period of 93 hours beyond, electrical measurements were taken to confirm the cable's electrical performance. The results confirm that the acceptable criteria of ASTM E–119 were met or exceeded. The staff, therefore, has reasonable assurance that the cables will function as designed until the fire is extinguished.

(b) Mechanical Damage

The staff was concerned that the heat produced in a fire would cause structural features such as cable trays to collapse. The falling debris might impact the cable and cause its failure. In response, the licensee indicated that the four areas of concern are protected by a complete fire detection system that alarms in the control room. If a fire should occur, it would be detected in its formative stages before significant temperature rise occurs. The fire brigade would then extinguish the fire using manual fire fighting equipment. Additionally, if rapid fire propagation occurred, the available automatic sprinkler systems would actuate to suppress the fire and reduce room temperatures and thereby protect the shutdown-related cable and prevent debris formation. The staff, therefore, has reasonable assurance that the "fire-rated" cable will not be mechanically damaged by falling debris during a fire.

(c) Higher Temperatures in Cable Trays

In the proposed application, the "fire-rated" cable would be routed, in part, through cable trays containing conventional cable. The staff was concerned that a fire involving such cable would be more severe than the ASTM E–119 time-temperature curve. The fire test previously discussed included a configuration containing conventional cable, and since satisfactory results were obtained, this concern is resolved.

(d) Applicable Cable Voltages

In the early fire tests, the conductors of the "fire-rated" cable were energized at 110 Vac. The staff was concerned that the cable would be used at higher voltages (e.g. 600V). Subsequent fire tests were performed with the conductors energized at 480 Vac and 960 Vac and satisfactory results achieved. Therefore, this concern has been resolved.

(e) Changes in Electrical Characteristics

The staff was concerned that the "fire-rated" cable would not provide the electrical performance characteristics that are necessary for successful operation in the various applications. For example, the "fire-rated" cable is proposed for power, control and instrumentation circuits. The electrical characteristics of the cable (i.e. conductor and insulation) will change with temperature increase. Thus, the insulation must be designed and the cable must be sized so that these changes do not affect the performance of the required function. The electrical performance criteria for each application (i.e. power, control or instrumentation) must be specified. The "fire-rated" cable must then be shown to meet these criteria to assure that changes in the electrical characteristics of the "fire-rated" cable during a fire will not affect circuit operation. In response, electrical performance criteria were provided in section 3.0 of the FHAR. The staff concludes this response is acceptable.

(f) Post-Fire Operability

Because the fire-rated cable could be damaged by a fire, the staff was originally concerned that this damage would effect long-term performance of shutdown functions following a fire. However, because the licensee will install the cables outside of containment in areas completely protected by automatic fire detection and suppression systems, the staff concludes that any damage would be negligible and should not affect performance.

(g) Immersion Resistance

The staff was concerned that "wet short" conditions were not simulated in the "fire-rated" cable tests but cables in cable may be immersed in water for a significant time. The exemption request included only stainless steel sheathed cables and unsheathed cables in conduit. The staff concludes that such cables would not be subject to failure by "wet shorts," and this concern is considered resolved.

(h) Thermal Expansion Forces

The Staff was concerned that thermal expansion forces and post-fire mechanical forces due to firefighting and recovery operations were not simulated. The licensee indicated, however, that for the distributed fire load in this area, a real fire would not result in temperatures approaching the ASTM E–119 time-temperature curve over a large portion of the fire area even if the automatic suppression system did not operate. Prompt action by the fire brigade and automatic suppression would further reduce the time-temperature curve. The staff, therefore, concludes that satisfactory results from the hose stream tests with repeated application of hose stream forces have resolved this concern.

(i) Post-Test Assessment of Operability

The Staff was concerned that no post-test assessment of the operability of the "fire-rated" cables had been made. Subsequent tests have shown that the "fire-rated" cable can remain functional during the fire and for at least 94 hours thereafter. Therefore, this concern is resolved.

(j) Mechanical Damage Due to Delay in Automatic Suppression

The Staff was concerned that if the automatic suppression system did not operate as designed for a rapidly developing fire, the "fire-rated" cable could be damaged by debris. In the staff's opinion, the probability of a severe, rapidly developing fire is low with the in-situ final configuration, and the cable would not be damaged even if automatic suppression was delayed. Therefore, this concern is resolved.

(k) Continuous Cable in Each Fire Area

The "fire-rated" cable should be continuous through the fire area (i.e., splices between "fire-rated" and non "fire-rated" cable should be made outside of the fire area boundaries). In the November 7, 1985 revision to the FHAR, the licensee stated that the "Rockbestos" cable will generally be continuous. Where joining within the fire area is required, the splices will be enclosed in terminal boxes protected by a one-hour fire barrier. On this basis, this concern is considered resolved.

(l) Long-Term Surveillance

The Staff was concerned that for the life of the plant there would be no surveillance of the fire-rated cable comparable to that provided for fire-rated barriers. However, by letter dated July 22, 1986, the licensee committed to visually inspect the cable to verify its integrity whenever work is conducted in the vicinity of the cable. The plant maintenance procedures which will be modified to incorporate this requirement were listed in the letter. On this basis, the staff considers this concern resolved.

Based on the above evaluation, the staff concludes that the use of "fire-rated" cable in a fire area with a distributed in-situ fire loading and protected by automatic suppression systems provides an equivalent level of safety to that achieved by installing a one-hour fire barrier per section III.G.2.C of Appendix R.

The special circumstances of 10 CFR 50.12 apply in that application of the

regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The rule requires that redundant shutdown related systems be separated by a one hour fire-rated barrier and be free of fire damage. The underlying purpose of the rule is to accomplish safe shutdown in the event of a single fire and maintain the plant in a safe condition. This is accomplished by assuring that sufficient undamaged equipment is available to support safe shutdown assuming a fire within the area of concern. The use of fire-rated cable in a fire area with a distributed in-situ fire loading and protected by automatic suppression systems assures that the equivalent involved will be available to accomplish its safe shutdown function in the event of a fire. Thus, the underlying purpose of the rule is achieved.

4. III.G.2; exemption requested to allow less than 20 feet of separation which is free of intervening combustibles between redundant shutdown systems in area AB–FZ–4 (Penetration Area): The specific concern for a fire in this area is failure of the reactor coolant pump seals due to loss of both seal injection and thermal barrier cooling. Protection of either is sufficient to assure safe shutdown. In the June 4, 1984 Safety Evaluation, the staff granted an exemption in this area from the requirement to protect the required shutdown systems on the basis that sufficient time existed to perform manual actions to compensate for fire damage and provide adequate seal injection. However, by letter dated May 17, 1986, the licensee identified a shutdown scenario in which the time available for manual operation of valve MU–V14A (for seal injection) is "unacceptably short." Therefore, in order to assure reactor coolant pump seal integrity, the licensee reevaluated the availability of either seal injection through MU–V14A or thermal barrier cooling through IC–V3 for a fire in the area. The licensee concludes that one of these paths will be free of fire damage in order to ensure safe shutdown.

Protection of the cables for the above referenced valve operators in this fire area will be achieved using "Rockbestos" fire-rated cable. Despite these modifications, the valve operators for MU–V14A and its redundant counterpart, IC–V3, will not have a fire barrier between them. These valves are separated by a line-of-sight distance in excess of 33 feet.

The technical requirements of section III.G.2 have not been met for the above referenced valves because even though the valve operators are separated by more than 33 feet, the intervening space contains combustible materials in the form of cables in trays.

The staff was concerned that in the event of a fire both valve operators would be damaged. However, the fire hazard between these valves consists of cable insulation. A fire involving cable insulation would initially burn slowly with much smoke but with low heat release. The staff expects the existing fire detection system to actuate during the formative stages of the fire before serious damage would result. The fire brigade would be dispatched and would put out the fire using manual fire fighting equipment.

If the fire spread rapidly and a significant temperature rise occurred, the automatic sprinkler system would actuate to control the fire and to protect the valve actuators. Pending actuation of the system and/or arrival of the brigade, the horizontal distance between the valves provides reasonable assurance that no more than one valve would be damaged in the fire. Therefore, the presence of combustible materials in the intervening space between the valves is not significant.

Based on the plant conditions as described above, the staff concludes that the licensee's alternate fire protection configuration represents an equivalent level of safety to that achieved by compliance with section III.G.2.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in that particular circumstances is not necessary to achieve the underlying purpose of the rule. The rule requires that redundant shutdown related systems be separated by more than 20 feet free of intervening combustibles or fire hazards. The purpose of the rule is to assure that sufficient undamaged equipment is available to support safe shutdown assuming a fire within the area of concern. The twenty feet of separation free of intervening combustibles between redundant shutdown systems provides adequate time for the fire brigade to respond to a fire and protect at least one train. The 33 feet separating these redundant valves contains intervening combustibles in the form of cable insulation. Cable insulation initially burns slowly with much smoke and low heat release. Existing fire detection systems would actuate during the formative stages of a fire allowing the fire brigade ample time to respond to the fire before both trains were lost. Thus, the underlying purpose of the rule is achieved.

5. III.G.2; exemption requested to allow manual operation in lieu of providing fire protection for certain cables associated with emergency feedwater system valves in area IB–FZ–8: The technical requirements of Appendix R are not met in this area because circuits for redundant emergency feedwater system valves are not protected per the options identified in section III. G. As summarized in our evaluation in Exemption 2, on the basis that a fire which occurs in IB–FZ–8 will not spread such as to effect the manual operators for valves EF–V30A thru D, and on the basis that plant procedures and personnel are adequate to perform the necessary tasks within the time frame stipulated by the licensee, the absence of physical protection for these circuits is not significant.

The staff concludes that the licensee's alternate fire protection configuration provides an equivalent level of safety to that achieved by compliance with section III.G. of Appendix R.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the rule is to accomplish safe shutdown in the event of a single fire and maintain the plant in a safe condition. The rule requires fire protection for circuits and components associated with shutdown-related valves and pumps. However, certain valves can withstand the effect of a fire and still be manually operated. Sufficient time exists to allow this manual operation and maintain the plant in a safe shutdown condition. Thus, the underlying purpose of the rule is satisfied allowing manual operation of these components. Additionally, the licensee argues that providing additional protection features, as required by the regulations, would not result in a significant increase in the level of protection provided and would result in undue hardship and costs significantly in excess of those incurred by others similarly situated. These costs consist of additional engineering, procurement of materials, fabrication, and installation costs.

6. III.G.3; exemption requested from installing a fixed tire suppression system in the control room: The staff was concerned that if a fire of significant magnitude occurred, it would damage redundant shutdown systems and prevent the plant from achieving and maintaining safe shutdown conditions. However, the area is equipped with a smoke detection system as described in the FHAR. If a fire were to occur, it would be detected in its formative stages by this system or by

the plant operators who are always present. The fire would be able to be suppressed before significant damage occurred by the use of portable fire fighting equipment.

If a significant fire resulted which woud force control room evacuation, the licensee states that the plant can be safely shut down using the alternate shutdown capability which is independent of this fire area. Pending eventual fire extinguishment, the continuous fire-rated boundary construction of the control room would be able to confine the effects of the fire to the area of origin. Therefore, a fixed fire suppression system is not necessary to assure safe plant operation.

Based on the above evaluation, the staff concludes that the licensee's alternate fire protection configuration for the control room provides an equivalent level of safety to that achieved by compliance with Section III.G.3.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The rule requires the installation of a fixed fire suppression system in an area which has been provided with an alternate shutdown capability. The underlying purpose of the rule is to accomplish safe shutdown in the event of a single fire and maintain the plant in a safe condition. This is accomplished by assuring that sufficient undamaged equipment is available to support safe shutdown assuming a fire within the area of concern. The control room is continuously manned and has an installed smoke detection system. Thus, fires would be detected and extinguished in their formative stage. But in any event, the licensee has installed alternate shutdown capability which is independent of the control room. Thus, the underlying purpose of the rule is satisfied.

7. III.J; exemption requested from installing eight-hour battery powered emergency lighting in certain locations of the reactor building and control room: The staff's concern in the reactor building containment was that a reliable means of illumination be provided, that the path of travel be unobstructed and easily traversed, that the values requiring manipulation be accessible and that portable lighting would be adequate for the task.

During a visit to the plant on November 13, 1986, the staff walked down the route of travel to the valves and observed the valve locations in relation to the floor and possible obstructions. It is the staff's judgment that because (1) the route of travel is open and unobstructed and does not require travel via ladders, (2) the valves are within reach when standing on the floor, and (3) two operators will be performing the tasks together, each carrying a portable light, the use of portable lighting is an acceptable alternative in this instance.

The staff's concern in the control room was that a fire outside the area, concurrent with a loss of offsite power would result in the loss of all emergency lighting in the room. However, because the licensee will protect cables and components of one of the three emergency power sources to the control room lighting in accordance with section III.G.2, the staff has reasonable assurance that adequate emergency lighting will be available in the control room for a fire in any other area/zone.

Based on the licensee's commitments and plant conditions as described above, the staff concludes that the proposed alternate lighting will provide an equivalent level of illumination to that achieved by the installation of individual, fixed, eight-hour lighting units.

The special circumstances of 10 CFR 50.12 apply in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The regulations require individual eight-hour battery powered lighting units in areas required for safe shutdown and in access routes to such routes. The rule was designed to provide adequate, dependable lighting for operators under emergency conditions. For the control room, the protected lighting will be supplied power from the station batteries or the diesel generators. Both of these power supplies are dependable and would supply power for more than eight hours. Thus, the underlying purpose of the rule is achieved. For the containment building, portable lighting vice fixed lighting will satisfy the underlying purpose of the rule because (1) a very minimum number of valves are involved, (2) there is easy access to and from the valves and the valve operators, and (3) a minimum of two operators each with a portable light would be sent to operate the valves. Additionally, the licensee argues that compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted. Specifically, providing additional permanently mounted emergency lighting units would not result in a significant increase in the level of plant safety and would result in undue costs for engineering, procurement of materials, fabrication, and installation.

For further details with respect to this action, see the licensee's letters requesting the exemptions and the NRC's evaluation dated December 30, 1986, of the licensee's fire protection program, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Specifics are discussed in each exemption request but in general the underlying purpose of the rule is to accomplish safe shutdown in the event of a single fire and maintain the plant in a safe condition. This is accomplished by assuring that sufficient undamaged equipment is available to support safe shutdown assuming a fire within the area of concern. In the areas for which an exemption is being requested, passive as well as active fire protection features assure that any single fire will not result in the loss of safe shutdown capability.

These features include separation distance, fire barriers, sealed penetrations, water spray to preclude propagation, and manual actions. The fire protection features, in conjunction with low combustible loadings, provide a high degree of assurance that a single fire will not result in loss of safe shutdown capability. In addition, the special circumstances of 10 CFR 50.12(a)(2)(iii) apply on that compliance would result in costs that are significantly in excess of those contemplated when the regulation was adopted. Providing additional protection features, as would be required to meet the regulations, would not result in a significant increase in the level of protection and would result in undue costs for additional engineering, procurement of materials, fabrication, and installation. Accordingly, the Commission hereby grants the

exemptions listed in section III above from the requirements of 10 CFR 50, Appendix R.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (51 FR 45406).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 30th day of December, 1986.

For the Nuclear Regulatory Commission.

Frank Schroeder,

Acting Director, Division of PWR Licensing-B.

[FR Doc. 87-155 Filed 1-5-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

Metropolitan Edison Co. et al. (Three Mile Island Nuclear Station, Unit No. 1); Denial of Amendment to Facility Operating License and Opportunity for Hearing

In the matter of Metropolitan Edison Company, Jersey Central Power and Light Company, Pennsylvania Electric Company, GPU Nuclear Corporation, Three Mile Island Nuclear Station, Unit No. 1; notice of denial of amendment to facility operating license and opportunity for hearing.

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by GPU Nuclear Corporation, et al. (the licensees) for an amendment to Facility Operating License No. DPR-50 issued to GPU Nuclear Corporation for operation of the Three Mile Island Nuclear Station, Unit No. 1 (TMI-1) located in Dauphin County, Pennsylvania. Notice of consideration of issuance of this amendment and opportunity for prior hearing was published in the **Federal Register** on January 6, 1986 (51 FR 459).

The amendment would revise the provisions in the Technical Specifications relating to the steam generator tube plugging limitations in accordance with the licensees' application for amendment dated November 6, 1985. Basically, the present Technical Specifications require repairing or removing from service a steam generator tube when a defect exceeds 40% of the tube wall thickness. The proposed amendment would maintain the 40% throughwall limit on the secondary side of the tube but replaces the limit on the primary side of the tube with a sliding scale which goes from 40% to 70% throughwall depending on the size of the defect.

This proposed amendment is the subject of litigation and discovery for hearing scheduled to start in March 1987. However, the hearing is limited to issues raised by the contentions which relate to the adequacy of eddy current testing (ECT) and to concerns about the environmental effects of operational plant chemistry. There are many additional technical issues associated with the request which are not within the scope of the hearing issues. These matters are within the authority of the Director, Nuclear Reactor Regulation.

Specifically, independent of hearing contentions, the Commission conducted a detailed safety evaluation of the fracture mechanics methodology used by the licensees to justify a 70% Once Through Steam Generator (OTSG) tube plugging limit. The Commission has, in a Safety Evaluation (SE) dated December 23, 1986, concluded that the licensees' analyses are not technically acceptable. Thus, without regard to those issues under litigation, the Commission has decided that a 70% tube plugging limit is not acceptable, and the proposed amendment is denied.

The licensees were notified of the Commission's of the proposed Technical Specifications changes by letter dated December 23, 1986.

By February 5, 1987, the licensees may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Bruce W. Churchill, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

For further details with respect to this action, see (1) the application for amendment and supplement, dated November 6, 1985 and October 3, 1986 (respectively), and (2) the Commission's letter and SE to GPU Nuclear Corporation dated December 23, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126. A copy of the Commission's letter and SE may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland, this 23rd day of December, 1986.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, PWR Project Directorate #6, Division of PWR Licensing-B.

[FR Doc. 87-156 Filed 1-5-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Updating of Schedule A, B, C Positions Placed or Revoked

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on November 26, 1986 (51 FR 42953). Individual authorities established or revoked under Schedule A, B, or C between November 1, 1986, and November 30, 1986, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exception was established:

Department of the Air Force

One security specialist with the Office of Special Activities, Air Force Logistics Command, that will provide security management for highly classified research and development projects. Effective November 4, 1986.

The following exception was revoked:

Department of Health and Human Services

Schedule A excepted appointing authority for up to 75 positions providing direct services to Cuban and Haitian entrants was revoked because the Department is no longer responsible for providing such services and, consequently, its positions no longer require qualifications that cannot be measured through a competitive examination. Effective November 14, 1986.

Schedule B

The following exception was established:

Department of Defense

One Director, GM–15, at the Department of Defense Polygraph Institute, Fort McClellan, Alabama. Effective November 20, 1986.

Schedule C

The following exceptions have been established:

Department of Agriculture

Two Confidential Assistants to the Administrator, Agricultural Marketing Service. Effective November 4, 1986.

One Private Secretary to the Deputy Assistant Secretary for Governmental and Public Affairs. Effective November 5, 1986.

One Confidential Assistant to the Administrator, Food and Nutrition Service. Effective November 20, 1986.

Department of Commerce

One Deputy Director to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective November 4, 1986.

One Congressional Liaison Assistant to the Deputy Director for Congressional Affairs, Office of the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective November 7, 1986.

One Special Assistant to the Under Secretary for Travel and Tourism. Effective November 7, 1986.

One Confidential Assistant to the Deputy Under Secretary for Travel and Tourism. Effective November 13, 1986.

One Confidential Assistant to the Under Secretary for Economic Affairs. Effective November 25, 1986.

Department of Defense

One Private Secretary to the Principal Deputy Director, Program Analysis and Evaluation. Effective November 6, 1986.

One Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective November 7, 1986.

One Staff Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective November 7, 1986.

Department of Education

One Executive Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective November 4, 1986.

One Special Assistant to the Deputy Assistant Secretary, Office of Student Financial Assistance. Effective November 4, 1986.

One Special Assistant to the Director, Public Affairs Service. Effective November 4, 1986.

One Special Assistant to the Assistant Secretary for Civil Rights. Effective November 24, 1986.

Department of Energy

One Research Assistant to the Director, Office of Energy Research. Effective November 5, 1986.

One Executive Assistant to the Chairman, Federal Energy Regulatory Commission. Effective November 12, 1986.

One Director, Division of Press Services to the Director, Office of Communications, Office of Congressional, Intergovernmental and Public Affairs. Effective November 14, 1986.

One Staff Assistant to the Chairman, Federal Energy Regulatory Commission. Effective November 24, 1986.

One Staff Assistant to the Director, Office of Energy Research. Effective November 26, 1986.

One Special Assistant to the Assistant Secretary for Management and Administration. Effective November 26, 1986.

One Secretary (Confidential Assistant) to the Special Assistant to the Secretary. Effective November 26, 1986.

One Staff Assistant to the Assistant Secretary for Fossil Energy. Effective November 26, 1986.

Department of Health and Human Services

One Executive Assistant to the Associate Commissioner, Office of Family Assistance, Family Support Administration. Effective November 20, 1986.

One Special Assistant to the Executive Secretary. Effective November 25, 1986.

One Confidential Assistant to the Assistant Secretary for Human Development Services. Effective November 26, 1986.

One Special Assistant to the Assistant Secretary for Human Development Services. Effective November 26, 1986.

Department of Housing and Urban Development

One Executive Assistant to the General Deputy Assistant Secretary for Public and Indian Housing. Effective November 12, 1986.

One Confidential Assistant to the General Counsel. Effective November 13, 1986.

One Special Assistant to the Secretary. Effective November 20, 1986.

Department of the Interior

One Confidential Assistant to the Deputy Solicitor. Effective November 13, 1986.

One Special Assistant to the Director, National Park Service. Effective November 14, 1986.

One Special Assistant to the Director, U.S. Fish and Wildlife Service. Effective November 24, 1986.

Department of Justice

One Confidential Assistant to the Senior Special Assistant to the Attorney General. Effective November 4, 1986.

Department of Labor

One Special Assistant to the Assistant Secretary for Policy. Effective November 13, 1986.

Department of Transportation

One Policy Advisor to the Administrator, National Highway Traffic Safety Administration. Effective November 5, 1986.

ACTION

One Special Assistant to the Assistant Director for VISTA and Service Learning Programs, Office of Domestic and Anti-Poverty Operations. Effective November 26, 1986.

Arms Control and Disarmament Agency

One Secretary (Typing) to the Director. Effective November 5, 1986.

One Congressional Affairs Specialist to the Director of Congressional Affairs. Effective November 5, 1986.

Commission on Civil Rights

One Confidential Assistant to the Staff Director. Effective November 18, 1986.

Commodity Futures Trading Commission

One Administrative Assistant to a Commissioner. Effective November 25, 1986.

Consumer Product Safety Commission

One Special Assistant to the Deputy Executive Director. Effective November 13, 1986.

Environmental Protection Agency

One Staff Assistant to the General Counsel. Effective November 24, 1986.

Equal Employment Opportunity Commission

One Secretary (Typing) to the Commissioner. Effective November 7, 1986.

Export-Import Bank of the U.S.

One Administrative Assistant to a Director. Effective November 4, 1986.

Farm Credit Administration

One Private Secretary to a Member. Effective November 20, 1986.

Federal Deposit Insurance Corporation

One Deputy to the Chairman. Effective November 25, 1986.

Federal Emergency Management Agency

One Staff Assistant to the Director of External Affairs. Effective November 26, 1986.

Federal Home Loan Bank Board

One Deputy Chief of Staff to the Executive Director and Chief of Staff. Effective November 4, 1986.

Federal Mediation and Conciliation Service

One Secretary to the Director. Effective November 4, 1986.

General Services Administration

One Special Assistant to the General Counsel. Effective November 26, 1986.

Government Printing Office

One Special Assistant to the Public Printer. Effective November 6, 1986.

One Confidential Assistant to the Director of Legislative and Public Affairs. Effective November 20, 1986.

National Aeronautics and Space Administration

One Secretary (Stenography) to the Administrator. Effective November 6, 1986.

One Secretary (Stenography) to the Deputy Administrator. Effective November 6, 1986.

Office of Management and Budget

One Staff Assistant to the Associate Director for Management. Effective November 4, 1986.

One Confidential Secretary to the General Counsel. Effective November 20, 1986.

Office of Personnel Management

One Confidential Assistant (Typing) to the Deputy General Counsel. Effective November 3, 1986.

President's Commission on White House Fellowships

One Associate Director to the Director. Effective November 26, 1986.

Small Business Administration

One Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs. Effective November 5, 1986.

One Special Assistant to the Regional Administrator. Effective November 15, 1986.

United States Tax Court

One Secretary (Confidential Assistant) to a Judge. Effective November 20, 1986.

United States Information Agency

One Corporate Liaison Officer reporting to the Associate Director for Programs. Effective November 6, 1986.

One Special Assistant (Congressional Relations) to the General Counsel. Effective November 26, 1986.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–159 Filed 1–5–87; 8:45 am]

BILLING CODE 6325–01–M

POSTAL SERVICE

Privacy Act of 1974; Matching Program—Postal Service/State of Florida Office of the Auditor General

AGENCY: United States Postal Service.

ACTION: Notice of Computer Matching Program—U.S. Postal Service/ State of Florida Office of the Auditor General.

SUMMARY: The purpose of this document is to publish notice of the Postal Service's plan to participate as a source agency in a computer matching program to detect fraud, waste, and abuse in the programs of Aid to Families with Dependent Children (AFDC) and Food Stamps administered by the State of Florida. The match will compare the Postal Service's Payroll System File (050.020, Finance Records—Payroll System) with the file of recipients of these benefits as maintained by the Division of Public Assistance Fraud, State of Florida Office of the Auditor General.

DATE: The match is expected to begin on or about January 1987.

ADDRESS: Send any comments to Records Officer, Room 8121, U.S. Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260–5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office, (202) 268–5158.

SUPPLEMENTARY INFORMATION: The USPS has agreed to assist the Division of Public Assistance Fraud, State of Florida Office of the Auditor General (F–OAG), in its efforts to identify current postal employees in Florida receiving AFDC and food stamp benefits through the State of Florida to which they are not entitled. The F–OAG has investigatory responsibility for these public assistance programs which are administered by the State of Florida Department of Health and Rehabilitative Services. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service (USPS) and State of Florida Office of the Auditor General (F–OAG).

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the USPS will submit to the F–OAG a computer tape of the names and social security account numbers (SSANs) of its current postal employees in the State of Florida. The F–OAG will match that tape, using name and SSAN, against its tape of recipients of AFDC and food stamp benefits in the State of Florida. The purpose of this match is to identify current postal employees who are receiving benefits to which they are not entitled under these public assistance programs. In instances where SSANs match, i.e., "hits," the USPS will disclose to the F–OAG the following information from its payroll file: name, SSAN, date of birth, home address, facility where employed, and annual gross wage information.

The validity of "matched" employee/ benefit recipient information will be verified by the F–OAG using State of Florida Department of Health and Rehabilitative Services' (F–HRS) files. Subsequent actions may include collection of outstanding debts owed by those employees for past overpayment of these benefits and appropriate action against those employees fraudulently receiving benefits. Further, the USPS

Inspection Service may participate in the investigation of hits as a result of this matching program and establish investigative case files within the parameters of Privacy Act System USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use No. 28 (as revised at 51 FR 41181 of November 13, 1986) in USPS 050.020, Payroll System, most recently published in 51 FR 29028 of August 13, 1986.

c. *Period of the Match:* The matching program will be on a one-time basis and is expected to begin in January 1987 and end no later than June 1988.

d. *Security:* The F-OAG/F-HRS personnel who perform and verify the match will: (a) have the only access to the USPS computer tape; (b) use it for the purpose of the match and for no other purpose; and (c) safeguard it from unauthorized access. Likewise, information on benefit recipients disclosed to the USPS will be used by authorized personnel only for the purpose of the match and for no other purpose and will be safeguarded from unauthorized access. All information exchanged as a result of this matching project will be maintained in locked file areas when not in use.

e. *Disposition of Records:* The F-OAG will not retain or copy the tape provided by the USPS and will return it to the USPS within six months from the date of its receipt. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that no fraud or irregularity has occurred.

f. *Further Comments:* No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-151 Filed 1-5-87; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 86-12-80; Docket 44343]

Application of Independent Air, Inc. for Certificate Authority Under Subpart Q; Order to Show Cause

AGENCY: Office of Secretary, DOT.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Independent Air, Inc., fit and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

DATES: Persons wishing to file objections should do so no later than January 21, 1987.

ADDRESSES: Objections and answers to objections should be filed in Docket 44343 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lane, Special Authorities Division (P-47, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2341.

Dated: December 30, 1986.

Vance Fort,

Deputy Assistant Secretary for Public and International Affairs.

[FR Doc. 87-160 Filed 1-5-87; 8:45 am]

BILLING CODE 4910-62-M

[Order 86-12-79 Dockets 42944 and 42968]

Proposed Revocation of the Section 401 and 418 Certificates of Jet Charter Service, Inc. d/b/a/ Jet24 International Airways; Order To Show Cause

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the certificates of Jet Charter Service, Inc., d/b/a/ Jet 24 International Airways issued under sections 401 and 418 of the Federal Aviation Act.

DATE: Persons wishing to file objections should do so no later than January 21, 1987.

ADDRESSES: Responses should be filed in Dockets 42944 and 42968 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Linda L. Lundell, Special Authorities Division, P-47, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-2336.

Dated: December 30, 1986.

Matthew V. Scocozza,

Assistent Secretary for Policy and International Affairs.

[FR Doc. 87-162 Filed 1-5-85; 8:47; 8:45 am]

BILLING CODE 4910-62-M

[Order 86-12-78]

Fitness Determination of Lake Coastal Airlines, Inc.; Order To Show Cause

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Lake Coastal, Inc., is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 7th Street, SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than January 21, 1987.

FOR FURTHER INFORMATION CONTACT: Michael Lane, Air Carrier Fitness Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590 (202) 366-2341.

Dated: December 30, 1986.

Vance Fort,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-161 Filed 1-5-87; 8:45 am]

BILLING CODE 4910-62-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 3
Tuesday, January 6, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:16 p.m. on Tuesday, December 30, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding an administrative enforcement proceeding against an insured bank: name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(A)(ii)).

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: December 31, 1986.

Federal Deposit Insurance Corporation.

Noyle L. Robinson,

Executive Secretary.

[FR Doc. 87-210 Filed 1-2-87 11:37 am]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

December 31, 1986.

TIME AND DATE: 10:00 a.m., Thursday, January 8, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Cases heard for oral argument on December 16, and 17, 1986, including: NACCO Mining Co., LAKE 85-87-R, etc.; Greenwich Collieries, PENN 85-298-R; White County Coal Corp., LAKE 86-58-R, etc.; and Emerald Mines Corp., PENN 85-298-R. (Issues include consideration of requirements for taking enforcement actions under section 104(d) of the Mine Act, 30 U.S.C. 814(d).)

It was determined by a unanimous vote of Commissioners that this meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87-187 Filed 1-2-87 10:47 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

Federal Register Citation of Previous Announcement: Notice forwarded to Federal Register on December 31, 1986.

Previously Announced Time and Date of the Meeting: 10:00 a.m., Thursday, January 8, 1987.

Changes in the Meeting: Deletion of the following open item(s) from the agenda:

Proposed amendment to Regulation H (Membership of State Banking Institutions in the Federal Reserve System) implementing the Bank Secrecy Act compliance provision of the Anti-Drug Abuse Act of 1986.

Contact Person for More Information: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: January 2, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-263 Filed 1-2-87; 3:41 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

Time and Date: 11:00 a.m., Monday, January 12, 1987.

Place: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

Status: Closed.

Matters to be Considered:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

Contact Person for More Information: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 2, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-264 Filed 1-2-87; 3:41 pm]

BILLING CODE 6210-01-M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

TIME AND DATE: 8:00 a.m., January 12, 1987.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

STATUS: Part of the meeting will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

8:00—Meeting—Board of Regents

(1) Approval of Minutes—7 October 1986;
(2) Faculty Matters:
  (a) Faculty Appointments;
  (b) Notification of Sabbatical Leave;
  (c) Vice President Position and Related Personnel Matters;
(3) Report—Admissions;
(4) Report—Associate Dean for Operations;
(5) Report—President, USUHS:
  (a) University Awards;
  (b) Certification of Graduate Students;
  (c) Hebert School of Medicine;
  (d) Information Items;
  (e) Report—Pakistan-United States Laboratory for Seroepidemiology;
(6) Comments—Members, Board of Regents;
(7) Comments—Chairman, Board of Regents;
(8) Faculty Research Presentations;
(9) Awards Presentation

Closed to the Public:

(2)(c) Vice President Position and Related Personnel Matters
New Business

SCHEDULED MEETINGS: April 13, 1987.

CONTACT PERSON FOR MORE INFORMATION: Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295-3049.

GENERAL COUNSEL CERTIFICATION: The General Counsel, in accordance with section 3(f)(1) of the Government in the Sunshine Act, 5 U.S.C. 552b(f)(1) and the Board of Regents' rules issued under that Act, 32 CFR 242a.6(g), hereby certifies that portion of the Board of Regents' meeting of January 12, 1987, at which the Board will consider the position of Vice President and related personnel matters, pursuant to 10 U.S.C. 2113(f), may properly be closed to the public on the basis of the exemption set forth in the Board of Regents' rules at 32 CFR 242a.4(b) and (f).

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 31, 1986.

[FR Doc. 87-220 Filed 1-2-87; 12:28 am]

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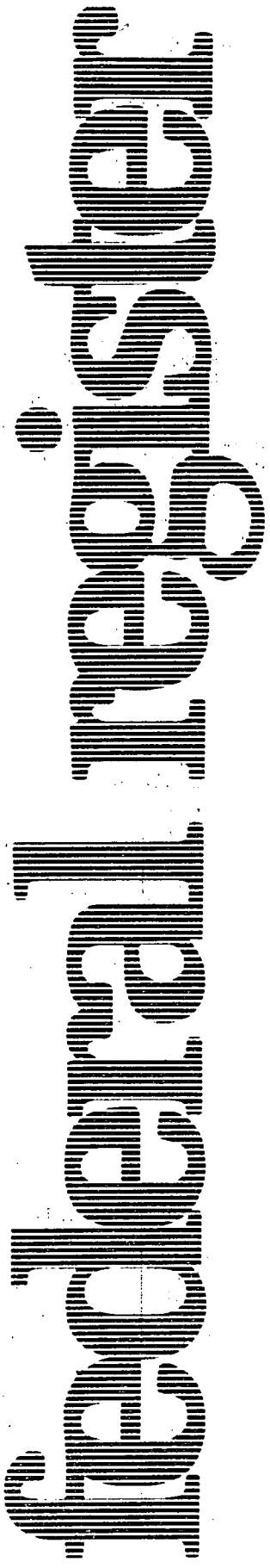

Tuesday
January 6, 1987

Part II

Department of Justice

Office of the Attorney General

28 CFR Part 51

Revision of Procedures for the Administration of Section 5 of the Voting Rights Act of 1965; Final Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 51

[Order No. 1164-86]

Revision of Procedures for the Administration of Section 5 of the Voting Rights Act of 1965

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Attorney General finds it necessary to revise the Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 CFR Part 51, 46 FR 872, Jan. 5, 1981. The revisions are needed to conform the Procedures to developments that have occurred since 1981, interpretations of Section 5 contained in judicial decisions, and changes mandated by the 1982 Amendments to the Voting Rights Act.

Proposed revised Procedures were published for comments on May 6, 1985 (50 FR 19122), and a 60-day comment period was provided.

DATE: The revised Procedures will be effective February 5, 1987.

FOR FURTHER INFORMATION CONTACT: David H. Hunter, Attorney, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530, (202) 724–5898.

SUPPLEMENTARY INFORMATION: Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, requires certain jurisdictions (listed in the Appendix) to obtain "preclearance" from either the United States District Court for the District of Columbia or from the United States Attorney General before implementing any new standard, practice, or procedure that affects voting.

Procedures for the Attorney General's administration of Section 5 were first published in 1971. Proposed Procedures were published for comments on May 28, 1971 (36 FR 9781), and the final Procedures were published on September 19, 1971 (36 FR 18186). As a result of experience under the 1971 Procedures, changes mandated by the 1975 Amendments to the Voting Rights Act, and interpretations of Section 5 contained in judicial decisions, revised Procedures were published for comment on March 21, 1980 (45 FR 18890), and final revised Procedures were published on January 5, 1981 (46 FR 870) (corrected at 46 FR 9571, Jan. 29, 1981).

In the six years since the revision became final, the Attorney General has had further experience in the consideration of voting changes, most significantly with respect to submitted redistricting plans adopted following the 1980 census; the courts have made a number of important decisions in cases involving Section 5, and Congress has again amended the Voting Rights Act. This new revision reflects these developments.

Comments

In response to the Notice of Proposed Rulemaking published on May 6, 1985, 120 comments were received. Included among them were comments from or on behalf of 10 national or regional public interest organizations, 25 State or local civic or political organizations, 2 Members of Congress, 2 election officials of covered jurisdictions, 1 member of the legislature of a covered State, 1 chairman of a Federal commission (commenting on his own behalf), and 10 other persons (primarily attorneys) with expertise in Section 5 matters. All comments received are available for inspection and copying at the office of the Voting Section, Civil Rights Division, Department of Justice, Washington, DC 20530.

Those commenting expressed a wide diversity of views, and we found the comments stimulating and of great assistance in the preparation of these final Procedures. The final revised Procedures reflect our consideration of the comments as well as further consideration of sections or topics that were not the subject of comments.

A number of those commenting expressed apprehension that the publication of proposed revised Procedures was an indication that the enforcement of Section 5 would be weakened. They should be reassured that this is not the case. The Congress in extending the Voting Rights Act in 1982 and the Supreme Court in its decisions with respect to Section 5 since that extension (see *NAACP* v. *Hampton County Election Commission,* 105 S.Ct. 1128, 1134 (1985); *McCain* v. *Lybrand,* 465 U.S. 236, 248–49 (1984); *City of Lockhart* v. *United States,* 460 U.S. 125 (1983); and *City of Port Arthur* v. *United States,* 459 U.S. 159 (1982)) have made it clear that Section 5 is the keystone of the Voting Rights Act and that vigorous enforcement of it should continue. It was in this spirit that we proposed revisions to the Procedures and that we promulgate these revised Procedures.

Subpart F

The proposed new Subpart F, Determinations by the Attorney General, received the most extensive comment. The purpose of the new subpart is to provide guidance to submitting authorities with respect to the standards followed and to the factors considered relevant by the Attorney General in making determinations with respect to submitted voting changes. We hope that this guidance will better enable submitting authorities to avoid adopting new voting practices that have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group or that would be tainted by a discriminatory purpose. We also hope that the information contained in the new subpart will be informative and helpful to members of racial and language minority groups in covered jurisdictions, to interested organizations and their attorneys, and to other interested persons.

We concluded, on the basis of the comments received, that further refinement of the new subpart, including some reorganization and simplification, would make it more useful.

Many of those commenting appear to want the subpart to be drafted in such a way that its standards could be applied to submitted changes in a fairly mechanical way. Given the nature of the determination that must be made under Section 5, this is unrealistic. A Section 5 determination is in most instances based on the appraisal of a complex set of facts that do not readily fit a precise formula for resolving the preclearance issues. The subpart therefore concentrates principally on the process that is followed, rather than attempting to set out any firm and fast rules of mechanical application.

Section 2. Unlike Section 5, which applies only in jurisdictions that have been determined to meet certain criteria, Section 2 of the Voting Rights Act, 42 U.S.C. 1973, applies nationwide. In the Act as originally adopted in 1965, the language of Section 2 tracked that of the 15th amendment to the Constitution. As part of the 1982 extension of the Voting Rights Act, Congress amended Section 2 so that it would reach voting practices that are considered to be discriminatory in result but that nevertheless may not violate the 14th or 15th amendments. See *City of Mobile* v. *Bolden,* 446 U.S. 55 (1980). The impact of the revision of Section 2 on determinations made under Section 5 was the subject of considerable discussion in the comments.

In the proposed subpart we set forth the position that a Section 5 objection would be made by the Attorney General to a change that amounted to a clear violation of Section 2.

Some commenters argued that this was improper, that a violation of Section

2 cannot serve as a basis for a Section 5 objection in any circumstance. Others maintained that a voting change in violation of Section 2 is objectionable under Section 5, but they disagreed with the explanation of how Section 2 standards are to be applied in the Section 5 context.

In preparing this Final Rule, we have carefully considered the views that have been presented, assessed our extensive experience in making determinations under Section 5 in the years since Section 2 was amended, and reviewed again the amendment and its legislative history. This process has prompted some careful rethinking on our part of how best to describe the proper role of Section 2 in the Section 5 review process.

Our experience indicates that, because of the different placement of the burden of proof under Section 2 (*i.e.*, the complainant shoulders the burden of proving that the proposed change is discriminatory) and Section 5 (*i.e.*, the submitting jurisdiction shoulders the burden of proving that the proposed changes are free of discrimination), it would be exceedingly rare that a jurisdiction would be able to satisfy its burden of proof imposed by Section 5 concerning a voting procedure (*i.e.*, that it is free of discriminatory purpose and effect) and still face the prospect that the same change violates amended Section 2. In fact, our review of the thousands of changes considered since the 1982 amendment of Section 2 has identified only a handful in which the disposition even arguably presented this possibility.

Nor is this circumstance particularly surprising when one considers that the analysis used in the Section 5 preclearance process requires evaluation of precisely the same factors that Congress specified as being relevant to a determination under Section 2. *Compare* S. Rep. No. 417, 97th Cong., 1st Sess. 28–29 (1982), *with Rogers* v. *Lodge*, 458 U.S. 613 (1982); and see *Thornburg* v. *Gingles*, 106 S.Ct. 2752 (1986), and *White* v. *Regester*, 412 U.S. 755 (1973). If the submitting jurisdiction can demonstrate on preclearance that the proposed change, on a studied analysis of those factors, raises no legitimate inference of a discriminatory purpose or retrogressive effect, the overwhelming likelihood is that there will be no legitimate basis for the Attorney General to withhold preclearance on the ground that the same change will on implementation nonetheless produce discriminatory "results." Even so, the guidelines recognize that if the rare case should be presented to the Attorney General, and he should conclude that a change, otherwise acceptable under Section 5, cannot take effect without producing forbidden discriminatory results in violation of amended Section 2, preclearance will be withheld.

Out of an abundance of caution, moreover, and because we want to guard against leaving any area of Voting Rights Act enforcement unattended, the guidelines make clear that where a submitted change appropriately receives Section 5 preclearance, and it subsequently develops that implementation of that change produces discriminatory results in violation of Section 2, an action may be commenced by the United States in the court of appropriate jurisdiction to litigate the Section 2 issue. In other words, Section 5 preclearance will not immunize any change from later challenge by the United States under amended Section 2.

This approach appears to be most closely aligned with the intent of Congress in its amendments to the Voting Rights Act in 1982. There was plainly no intent in Congress to revamp the Section 5 review process. Unlike court proceedings, administrative review under Section 5—which is by statute limited to 60 days upon receipt of all necessary information—does not include the kind of hearing procedures that provide for the full presentation of evidence and rebuttal evidence by contesting parties and others interested in the proceedings. There is no formal record developed with findings of fact and conclusions of law announced at the end by the Attorney General. Accordingly, as we believe was contemplated by the legislators, in those circumstances where the facts available to the Attorney General clearly demonstrate that implementation of the submitted change will result in a Section 2 violation, an objection will be entered (see S. Rep. No. 417, 97th Cong., 1st Sess. 12 n. 31 (1982); 128 Cong. Rec. S7095 (daily ed. June 18, 1982) (remarks of Sen. Kennedy), and *id.* H3841 (June 23, 1982) (remarks of Rep. Sensenbrenner and response of Rep. Don Edwards, Chairman, Subcomm. on Civil and Constitutional Rights of the House Judiciary Comm.)). Conversely, where the facts do not compel such a conclusion, a change shown to be free of discriminatory purpose or effect will be granted preclearance under the existing review process (see *id.* H3844 (colloquy between Rep. Levitas and Chairman Edwards) and *id.* H3845 (colloquy between Rep. Fowler and Chairman Edwards)). Resolution of any post-implementation problems that should arise after Section 5 preclearance will be preserved for the judicial process in actions brought by the Attorney General or aggrieved parties. This approach to the interaction of Sections 2 and 5 assures that Congress' intent to protect against voting changes that deny or abridge voting rights is fully honored.

Retrogression. A second topic that attracted considerable attention among those commenting was the retrogression test for discriminatory effect. Announced by the Supreme Court in *Beer* v. *United States*, 425 U.S. 130, 140–42 (1976), and reaffirmed in *City of Lockhart* v. *United States*, 460 U.S. 125, 131–36 (1983), the retrogression test, which is set out in § 51.54, requires comparison between the submitted voting practice and a benchmark voting practice. In most instances the determination of the benchmark will be easy: the existing districts, the old polling place, the former registration hours, etc. New § 51.54(b) sets out the principles that the Attorney General normally follows in determining the appropriate benchmark.

In some circumstances, difficulties in this comparative approach to the determination of discriminatory effect will arise. See *County Council of Sumter County* v. *United States*, 555 F. Supp. 694, 704–06 (D.D.C. 1983); *Mississippi* v. *Smith*, 541 F. Supp. 1329, 1332–33 (D.D.C. 1982), appeal dismissed, 461 U.S. 912 (1982); *Mississippi* v. *United States*, 490 F. Supp. 569, 581–82 (D.D.C. 1979), aff'd mem., 444 U.S. 1050 (1980) (*compare* Stevens, J., concurring, 444 U.S. at 1051–52, *with* Marshall, Brennan, and White, JJ., dissenting, *id.* at 1054–55); *Charlton County Board of Education* v. *United States*, C.A. No. 78–0564 (D.D.C. Nov. 1, 1978); *Wilkes County* v. *United States*, 450 F. Supp. 1171, 1178 (D.D.C.), aff'd mem., 439 U.S. 999 (1978). In cases where no benchmark is available, the guidelines make clear that the Section 5 preclearance determination necessarily focuses on the question of discriminatory purpose.

Even where the benchmark is clear, determining whether a new practice is retrogressive can be difficult and problematical. New practices can be different without being clearly better or worse for any particular group of voters; they can be better in some respects and worse in others; they can be better for some minority voters and worse for others.

In the redistricting context a reduction in the number or percentage of minority voters in a particular district may have no impact on the opportunity for effective political participation. For example, the minority percentage might

remain so high that minority control is not compromised; the minority percentage might have begun so low that minority influence could not effectively be reduced further, or reductions in the minority percentage in one district might be effectively counterbalanced by increases in others.

Thus, any determination of retrogression must go beyond a simple numerical analysis and include the consideration of all the factors that could be relevant to an understanding of the impact of the change.

We do not read *Beer* to require the reflexive imposition of objections in total disregard of the circumstances involved or the legitimate justifications in support of changes that incidentally may be less favorable to minority voters. For example: Suppose that State law (in effect since prior to November 1, 1964) requires each voting precinct to have at least 100 registered voters. A precinct in 1970 had 200 voters, all of whom were black. Because of outmigration only 20 registered voters, still all black, remain in 1980. The county consolidates the precinct with the adjacent precinct, with the result that the average distance to the polling place for a voter in the old precinct increases from 5 miles to 6 miles, arguably causing a technical "retrogression" in such voter's access to the polls. We do not believe that the Attorney General should either object to or preclear this precinct consolidation without a thorough consideration of all the relevant factors.

Similarly, in the redistricting context, there may be instances occasioned by demographic changes in which reductions of minority percentages in single-member districts are unavoidable, even though "retrogressive," *i.e.*, districts where compliance with the one person, one vote standard necessitates the reduction of minority voting strength.

Other Issues. Some commenters took exception to our inquiring into whether low minority electoral participation rates are products of past discrimination, advocating our adopting a presumption that this is the case. While in some circumstances (see *Kirksey* v. *Board of Supervisors of Hinds County*, 554 F.2d 139, 145 (5th Cir.), cert. denied, 434 U.S. 968 (1977), and *Gingles* v. *Edmisten*, 590 F. Supp. 345, 363 n. 23 (E.D.N.C. 1984), affirmed *sub nom. Thornburg* v. *Gingles*, 106 S.Ct. 2752 (1986)) this approach would be appropriate, it is not appropriate in all of the jurisdictions and circumstances to which Section 5 applies. See § 51.58(b)(4).

One commenter argued that the burden of proof (see. § 51.52(a)) should not be placed on submitting authorities. The statutory language is clear, however, and the Supreme Court has consistently held that Section 5 places the burden on submitting authorities to show that the proposed change has no discriminatory purpose nor retrogressive effect. See *McCain* v. *Lybrand*, 465 U.S. 236, 247, 256 (1984); *City of Lockhart* v. *United States*, 460 U.S. 125, 130 (1983); *McDaniel* v. *Sanchez*, 452 U.S. 130, 137 (1981); *City of Rome* v. *United States*, 446 U.S. 156, 183 n. 18 (1980); *City of Richmond* v. *United States*, 422 U.S. 358, 362 (1975); *Georgia* v. *United States*, 411 U.S. 526, 538 (1973); *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328, 335 (1966).

The reasons why we emphasize racial bloc voting (see § 51.58(b)(3)) were not apparent to one commenter. Redistrictings, adoptions of at-large elections, and annexations can affect the electoral streneth of different groups. Because, as experience makes clear, race often remains important politically, the voting strength of minority groups can be altered by such changes. And Section 5 protects minorities from vote dilution brought about through the adoption of changes with such consequences. See *City of Lockhart* v. *United States*, 460 U.S. 125 (1983); *City of Port Arthur* v. *United States*, 459 U.S. 159 (1982); *City of Rome* v. *United States*, 446 U.S. 156 (1980); *United Jewish Organizations of Williamsburg, Inc.* v. *Carey*, 430 U.S. 144 (1977); *Beer* v. *United States*, 425 U.S. 130 (1976); *City of Richmond* v. *United States*, 422 U.S. 358 (1975); *Georgia* v. *United States*, 411 U.S. 526 (1973); *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969).

The extent to which race remains relevant is an important factor in the Section 5 review of voting changes involving representation. An acceptable redistricting plan for a city in which a large portion of the white electorate regularly votes for minority candidates (or other candidates favored by the bulk of the minority electorate) could be quite different from an acceptable plan in a city in which such candidates, no matter how well qualified, never receive the votes of more than a small handful of the white electorate.

Other Provisions

As suggested by one commenter, we have alphabetized the definitions in § 51.2 and have rewritten the definition of preclearance to make clear that the withdrawal of an objection constitutes preclearance.

We have clarified § 51.12, Scope of Requirement, to make explicit that a voting change that returns a jurisdiction to a practice that was previously in effect (e.g., to that in use on November 1, 1964) is subject to the preclearance requirement. See *Dotson* v. *City of Indianola*, 521 F. Supp. 934, 943 (N.D. Miss. 1981), aff'd mem., 456 U.S. 1002 (1982); *NAACP, DeKalb County Chapter* v. *Georgia*, 494 F. Supp. 668, 677–79 (N.D. Ga. 1980).

Two commenters recommended an additional example of a voting change in § 51.13, to reflect the decisions in *Hardy* v. *Wallace*, 603 F. Supp. 174, 178–79 (N.D. Ala. 1985), *McCain* v. *Lybrand*, 465 U.S. 236, 250 n. 17 (1984), and *Horry County* v. *United States*, 449 F. Supp. 990, 995 (D.D.C. 1978). At issue here is the Section 5 coverage of reallocations of authority among different governmental bodies. While we agree that some reallocations of authority are covered by Section 5 (e.g., implementation of "home rule"), we do not believe that a sufficiently clear principle has yet emerged distinguishing covered from noncovered reallocations to enable us to expand our list of illustrative examples in a helpful way.

One commenter also offered a new example based on *Huffman* v. *Bullock County*, 528 F. Supp. 703, 706 (M.D. Ala. 1981): "any change which imposes a substantial economic disincentive upon persons seeking or wishing to seek office." *Huffman* involved a change that required the elected probate judge to assume certain expenses of his office amounting to almost twice his salary. It would appear that § 51.13(g)—"[a]ny change affecting the eligibility of persons . . . to become or remain holders of elective offices"—is sufficiently broad to cover this situation.

We have revised § 51.15, Enabling Legislation, to make explicit that enabling legislation directed to officials or agencies of the State itself is treated no differently from such legislation directed to political subunits of the State. See *United States* v. *Texas*, C.A. No. SA–85–CA–2199 (W.D. Tex. Aug. 1, 1985), aff'd mem., 106 S.Ct. 844 (1986).

We proposed the new § 51.17 to make clear that special elections are likely to involve voting changes subject to preclearance. A number of commenters thought that the language used did not adequately alert jurisdictions to the need to preclear special elections. We have inserted a new subsection (b) to clarify the impact of Section 5. See *NAACP* v. *Hampton County Election Commission*, 105 S.Ct. 1128, 1136 (1985), and *United States* v. *Texas*, C.A. No. SA–85–CA–2199 (W.D. Tex. Aug. 1, 1985), aff'd mem., 106 S.Ct. 844 (1986).

In response to a number of comments, we have rewritten § 51.18 on court-

ordered changes to state more simply and more fully the basic principles involved in the relationship between Federal courts and the Section 5 review process: Changes that reflect the policy choices of the submitting authority are subject to review. See *McDaniel* v. *Sanchez*, 452 U.S. 130, 153 (1981).

Federal courts generally order the use of court-fashioned redistricting or election plans only on an interim basis for one election or election cycle. Where this is the case, the continued use of the plan by the jurisdiction would require preclearance. We cannot, however, accept the proposition advocated by some commenters that the second use of a court-fashioned plan must be precleared in those instances where the Federal court has ordered that the plan be used in subsequent elections. In those instances appropriate relief must be obtained by seeking appellate review of the court's decision.

We have added subsection (c) in recognition that the courts on occasion are presented with situations in which the temporary waiver of the preclearance requirement is found to be a less unacceptable option. See *Upham* v. *Seamon*, 456 U.S. 37, 44 (1982); *Burton* v. *Hobbie*, 543 F. Supp. 235, 239 (M.D. Ala.), aff'd mem., 459 U.S. 961 (1982); *Terrazas* v. *Clements*, 537 F. Supp. 514, 537–40 (N.D. Tex. 1982). The availability under § 51.34 of expedited review, however, should eliminate the need for such emergency action by the courts in all but the most unusual of cases, and any subsequent use of the practice in question remains subject to the preclearance requirement. In addition, as indicated in § 51.54(b)(3), such a voting practice does not become the benchmark for use in the review of subsequent changes.

Some commenters opposed the deletion of good cause as a requirement for the withdrawal of submissions under § 51.25. Concern was expressed especially that permitting the withdrawal of submissions without a showing of good cause would enable a jurisdiction to avoid satisfying the preclearance requirement with respect to practices no longer in use. As indicated in § 51.10, however, "[t]he obligation to obtain . . . preclearance is not relieved by unlawful enforcement" of a change. See also § 51.27(p); *McCain* v. *Lybrand*, 465 U.S. 236 (1984); *City of Pleasant Grove* v. *United States*, C.A. No. 80–2589 (D.D.C. Oct. 7, 1981), slip op. at 2; and Section 4(a)(1)(D) of the Act.

We have revised § 51.25 to make its intent clear, and, as suggested by one commenter, we have added a new subsection (b) to indicate that notice of withdrawals will be given to parties registered under § 51.32. On the other hand, contrary to the view expressed by one commenter, we believe that it is important to retain the requirement that a request to withdraw a submission be made in writing. Where the submitting authority is subject to time constraints, a number of methods for the expedited delivery of the notice are available.

We have added a new subsection (d) to § 51.26, the introductory section to Subpart C, Contents of Submissions, to notify submitting authorities that the Attorney General, when the circumstances warrant it, will make no attempt to review on the merits submissions that do not enable the Attorney General to identify the change for which review is sought and thus, as a practical matter, preclude analysis. See *NAACP* v. *Hampton County Election Commission*, 105 S.Ct. 1128, 1137–38 (1985); *McCain* v. *Lybrand*, 465 U.S. 236, 249, 256–57 (1984); *United States* v. *Board of Commissioners of Sheffield*, 435 U.S. 110, 136 (1978); *Allen* v. *State Board of Elections*, 393 U.S. 544, 571 (1969).

A second new subsection to § 51.26, subsection (g), provides the required notice that approval from the Office of Management and Budget has been obtained under the Paperwork Reduction Act, 44 U.S.C. 3504(h)(1).

As suggested by one commenter, we have inserted a new subsection (b) into § 51.27, Required Contents, to indicate that a copy of the document setting forth the voting practice to be replaced should be provided. See *McCain* v. *Lybrand*, 465 U.S. 236, 251 n. 19 (1984).

In addition, we have added a new subsection (q) to § 51.27 to state that certain demographic data and maps are required contents for the submission of redistrictings and annexations. Our experience has shown that this material is invariably needed.

Also with respect to annexations, we have added a new subsection (c) to § 51.28 to indicate the need, shown by our experience, for information concerning projected land use and population of annexed areas, and we have added new subsections 51.61(b), 51.28(c)(3), and 51.27(q) to inform cities that all unprecleared annexations should be submitted and reviewed together. See *City of Pleasant Grove* v. *United States*, C.A. No. 80–2589 (D.D.C. Oct. 7, 1981), slip op. at 2, and *City of Rome* v. *United States*, 472 F. Supp. 221, 247 (D.D.C. 1979), aff'd, 446 U.S. 156 (1980); see also *Dotson* v. *City of Indianola*, 521 F. Supp. 934, 942–43 (N.D. Miss. 1981), aff'd mem., 456 U.S. 1002 (1982).

One commenter sought a more precise definition of the public notice that is contemplated under § 51.28 (f) and (g). This is a practical matter that will depend on the particular circumstances involved. A general rule specifying a certain level of publicity, even if the Attorney General had the authority to promulgate one, would be counterproductive.

The revisions proposed in the sections concerning Obtaining Information from the Submitting Authority and Supplementary Submissions (§§ 51.37 and 51.39) were intended to clarify the impact of *Garcia* v. *Uvalde County*, 455 F. Supp. 101 (W.D. Tex. 1978), aff'd mem., 439 U.S. 1059 (1979), and to reflect more accurately the actual practice of the Attorney General. The comments that were received led us to conclude that further clarification and further refinement of our practice would be beneficial.

We state in new subsection (d) of § 51.37 that the receipt of a response to a letter requesting more information pursuant to § 51.37(a) "that neither provides the information requested nor states that such information is unavailable" does not start a new 60-day period. The new subsection states that it is our practice to notify submitting authorities when we receive a response that we consider inadequate. Because the receipt of such an inadequate response does not start a new 60-day period, the Attorney General's failure to respond within 60 days would not constitute preclearance of the changes in question.

Under § 51.39, the submission of a second related change or the provision of supplementary information begins a new 60-day period. This practice was upheld in *Lucas* v. *Bolivar County*, 567 F. Supp. 433, 435–36 (N.D. Miss. 1983). To avoid the kind of uncertainty that contributed to the need for that litigation, new subsection (b) indicates that the Attorney General will notify the submitting authority when the 60-day period is recalculated because of the receipt of supplementary information or of a second related submission.

The proposed revision of § 51.50(d) indicated that the files described in § 51.50 would be available "either in paper or in microfiche form." One commenter advocated the continued availability of all files in their original paper form, "since machines for viewing microfiche will not always be accessible." Because of the huge volume of submissions, we have had to convert our files to microfiche. The Voting Section maintains a public reading area equipped with microfiche readers.

As discussed in the May 6 preamble, the 1982 Amendments to the Voting Rights Act rewrote the bailout requirements of Section 4(a) of the Act, effective August 5, 1984. The only bailout action to date to which the new standards were applicable has been voluntarily dismissed. *Alaska* v. *United States*, C.A. No. 84-1362 (D.D.C. July 11, 1985).

Following the suggestions of a number of commenters, § 51.62(b) (now renumbered § 51.64(b)) has been clarified to indicate more specifically the circumstances in which the Attorney General, in defending bailout actions, will not consider an objection to be a bar to bailout under Section 4(a)(1)(E).

Finally, we have made revisions in §§ 51.1, 51.5, 51.33, 51.35, 51.48, 51.49, and 51.60 (now renumbered § 51.62) to improve the clarity and accuracy of the Procedures; we have corrected typographical errors in §§ 51.1, 51.7, 51.15, 51.22, 51.23, 51.27-29, 51.34, 51.44, and 51.48 and in the Appendix, and we have updated a cross reference in § 51.40.

Because the provisions of Subparts F, G, and H have been reorganized or renumbered, a redesignation table for those subparts is provided.

REDESIGNATION TABLE

Proposed revised section	Final revised section
	51.51
51.51(a), 51.51(b)	51.52(a)
51.51(d)(1)	51.52(b)
51.51(d)(2), 51.51(d)(3)	51.52(c)
51.51(c)	51.53
51.53	51.54(a), 51.54(b)
51.54, 51.56(c), 51.57(a)(3), 51.58(b)(3).	51.55(a), 51.55(b)
51.56(b)	51.56
51.55	51.57
51.56	51.58
51.56(a)	51.58(a), 51.58(b)
51.57(c)(1), 51.58(d)(1)	51.58(b)(1)
51.57(c)(2), 51.58(d)(2)	51.58(b)(2)
51.57(b)(1), 51.58(c)(1), 51.59(c)(2).	51.58(b)(3)
51.57(c)(3), 51.58(d)(3)	51.58(b)(4)
51.57	51.59, 51.59(a)
51.57(a)(2)	51.59(b)
51.57(b)(2), 51.56(c)(2)(i)	51.59(c)
51.57(b)(3)	51.59(d)
51.57(b)(4)	51.59(e)
51.57(c)(4)	51.59(f)
51.57(c)(5)	51.59(g)
51.58	51.60
51.58(b)(2)	51.60(a)
51.58(c)(3)	51.60(b)
51.58(c)(2)	51.60(c)
51.59	51.61
51.59(a)	51.61(a), 51.61(b), 51.61(c)
51.59(b)	51.61(c)(1)
51.59(c)(1)	51.61(c)(2)
51.59(c)(3)	51.61(c)(3)
51.60	51.62
51.61	51.63
51.62	51.64
51.63	51.65
51.64	51.66
51.65	51.67

List of Subjects in 28 CFR Part 51

Administrative practice and procedure, Archives and records, Authority delegations (government agencies), Civil rights, Elections, Political committees and parties, Voting rights.

Under the definition of section 1(b) of E.O. 12291, 3 CFR 127 (1961 Compilation), these Procedures do not constitute a major rule. Accordingly, a regulatory impact analysis, pursuant to section 3 of E.O. 12291, has not been prepared. Pursuant to section 3(c)(3) of E.O. 12291, these revised Procedures were submitted to the Director of the Office of Management and Budget more than 10 days prior to this publication. Issuance of these Procedures does not constitute a major Federal action and will not significantly affect the human environment. Accordingly, neither an environmental impact assessment nor an environmental impact statement has been prepared. See 28 CFR Part 61. Because these Procedures are excepted under 5 U.S.C. 553(b)(A), an initial regulatory flexibility analysis is not required under 5 U.S.C. 603(a). Accordingly, such an analysis has not been prepared. The collection of information requirements contained in these Procedures have been submitted to and approved by the Director of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3504(h)(1) and 5 CFR 1320.13. See § 51.26(g).

Accordingly, 28 CFR Part 51 is revised to read as set forth below.

Dated: December 24, 1986.

Edwin Meese III,

Attorney General.

PART 51—PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

Subpart A—General Provisions

§ 51.1 Purpose.

(a) Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, prohibits the enforcement in any jurisdiction covered by Section 4(b) of the Act, 42 U.S.C. 1973b(b), of any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage, until either:

(1) A declaratory judgment is obtained from the U.S. District Court for the District of Columbia that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, or

(2) It has been submitted to the Attorney General and the Attorney General has interposed no objection within a 60-day period following submission.

(b) In order to make clear the responsibilities of the Attorney General under Section 5 and the interpretation of the Attorney General of the responsibility imposed on others under this section, the procedures in this part have been established to govern the administration of Section 5.

§ 51.2 Definitions.

As used in this part—

"Act" means the Voting Rights Act of 1965, 79 Stat. 437, as amended by the Civil Rights Act of 1968, 82 Stat. 73, the Voting Rights Act Amendments of 1970, 84 Stat. 314, the District of Columbia Delegate Act, 84 Stat. 853, the Voting Rights Act Amendments of 1975, 89 Stat. 400, and the Voting Rights Act Amendments of 1982, 96 Stat. 131, 42 U.S.C. 1973 *et seq.* Section numbers, such as "Section 14(c)(3)," refer to sections of the Act.

"Attorney General" means the Attorney General of the United States or the delegate of the Attorney General.

"Change affecting voting" means any voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage under Section 4(b) and includes, *inter alia*, the examples given in §51.13.

"Covered jurisdiction" is used to refer to a State, where the determination referred to in § 51.4 has been made on a statewide basis, and to a political subdivision, where the determination has not been made on a statewide basis.

"Language minorities" or "language minority group" is used, as defined in the Act, to refer to persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. Sections 14(c)(3) and 203(e). See 28 CFR Part 55, Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups.

"Political subdivision" is used, as defined in the Act, to refer to "any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." Section 14(c)(2).

"Preclearance" is used to refer to the obtaining of the declaratory judgment described in Section 5, to the failure of the Attorney General to interpose an objection pursuant to Section 5, or to the withdrawal of an objection by the Attorney General pursuant to § 51.48(b).

"Submission" is used to refer to the written presentation to the Attorney General by an appropriate official of any change affecting voting.

"Submitting authority" means the jurisdiction on whose behalf a submission is made.

"Vote" and "voting" are used, as defined in the Act, to include "all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election." Section 14(c)(1).

§ 51.3 Delegation of authority.

The responsibility and authority for determinations under Section 5 have been delegated by the Attorney General to the Assistant Attorney General, Civil Rights Division. With the exception of objections and decisions following the reconsideration of objections, the Chief of the Voting Section is authorized to act on behalf of the Assistant Attorney General.

§ 51.4 Date used to determine coverage; list of covered jusrisdictions.

(a) The requirement of Section 5 takes effect upon publication in the **Federal Register** of the requisite determinations of the Director of the Census and the Attorney General under section 4(b). These determinations are not reviewable in any court. Section 4(b).

(b) Section 5 requires the preclearance of changes affecting voting made since the date used for the determination of coverage. For each covered jurisdiction that date is one of the following: November 1, 1964; November 1, 1968; or November 1, 1972.

(c) The Appendix to this part contains a list of covered jurisdictions, together with the applicable date used to determine coverage and the **Federal Register** citation for the determination of coverage.

§ 51.5 Termination of coverage (bailout).

A covered jurisdiction or a political subdivision of a covered State may terminate the application of Section 5 (or bail out) by obtaining the declaratory judgment described in Section 4(a) of the Act.

§ 51.6 Political subunits.

All political subunits within a covered jurisdiction (e.g., counties, cities, school districts) are subject to the requirement of Section 5.

§ 51.7 Political parties.

Certain activities of political parties are subject to the preclearance requirement of Section 5. A change affecting voting effected by a political party is subject to the preclearance requirement: (a) If the change relates to a public electoral function of the party and (b) if the party is acting under authority explicitly or implicitly granted by a covered jurisdiction or political subunit subject to the preclearance requirement of Section 5. For example, changes with respect to the recruitment of party members, the conduct of political campaigns, and the drafting of party platforms are not subject to the preclearance requirement. Changes with respect to the conduct of primary elections at which party nominees, delegates to party conventions, or party officials are chosen are subject to the preclearance requirement of Section 5. Where appropriate the term "jurisdiction" (but not "covered jurisdiction") includes political parties.

§ 51.8 Section 3 coverage.

Under Section 3(c) of the Act, a court in voting rights litigation can order as relief that a jurisdiction not subject to the preclearance requirement of Section

5 preclear its voting changes by submitting them either to the court or to the Attorney General. Where a jurisdiction is required under Section 3(c) to preclear its voting changes, and it elects to submit the proposed changes to the Attorney General for preclearance, the procedures in this part will apply.

§ 51.9 Computation of time.

(a) The Attorney General shall have 60 days in which to interpose an objection to a submitted change affecting voting.

(b) Except as specified in §§ 51.37, 51.39, and 51.42 the 60-day period shall commence upon receipt by the Department of Justice of a submission.

(c) The 60-day period shall mean 60 calendar days, with the day of receipt of the submission not counted. If the final day of the period should fall on a Saturday, Sunday, any day designated as a holiday by the President or Congress of the United States, or any other day that is not a day of regular business for the Department of Justice, the Attorney General shall have until the close of the next full business day in which to interpose an objection. The date of the Attorney General's response shall be the date on which it is mailed to the submitting authority.

§ 51.10 Requirement of action for declaratory judgment or submission to the Attorney General.

Section 5 requires that, prior to enforcement of any change affecting voting, the jurisdiction that has enacted or seeks to administer the change must either: (a) Obtain a judicial determination from the U.S. District Court for the District of Columbia that denial or abridgment of the right to vote on account of race, color, or membership in a language minority group is not the purpose and will not be the effect of the change or (b) make to the Attorney General a proper submission of the change to which no objection is interposed. It is unlawful to enforce a change effecting voting without obtaining preclearance under Section 5. The obligation to obtain such preclearance is not relieved by unlawful enforcement.

§ 51.11 Right to bring suit.

Submission to the Attorney General does not affect the right of the submitting authority to bring an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change affecting voting does not have the prohibited discriminatory purpose or effect.

§ 51.12 Scope of requirement.

Any change affecting voting, even though it appears to be minor or indirect, returns to a prior practice or procedure, ostensibly expands voting rights, or is designed to remove the elements that caused objection by the Attorney General to a prior submitted change, must meet the Section 5 preclearance requirement.

§ 51.13 Examples of changes.

Changes affecting voting include, but are not limited to, the following examples:

(a) Any change in qualifications or eligibility for voting.

(b) Any change concerning registration, balloting and the counting of votes and any change concerning publicity for or assistance in registration or voting.

(c) Any change with respect to the use of a language other than English in any aspect of the electoral process.

(d) Any change in the boundaries of voting precincts or in the location of polling places.

(e) Any change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, deannexation, incorporation, reapportionment, changing to at-large elections from district elections, or changing to district elections from at-large elections).

(f) Any change in the method of determining the outcome of an election (e.g., by requiring a majority vote for election or the use of a designated post or place system).

(g) Any change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices.

(h) Any change in the eligibility and qualification procedures for independent candidates.

(i) Any change in the term of an elective office or an elected official or in the offices that are elective (e.g., by shortening the term of an office, changing from election to appointment or staggering the terms of offices).

(j) Any change effecting the necessity of or methods for offering issues and propositions for approval by referendum.

(k) Any change affecting the right or ability of persons to participate in political campaigns which is effected by a jurisdiction subject to the requirement of Section 5.

§ 51.14 Recurrent practices.

Where a jurisdiction implements a practice or procedure periodically or upon certain established contingencies, a change occurs: (a) The first time such a practice or procedure is implemented by the jurisdiction; (b) when the manner in which such a practice or procedure is implemented by the jurisdiction is changed, or (c) when the rules for determining when such a practice or procedure will be implemented are changed. The failure of the Attorney General to object to a recurrent practice or procedure constitutes preclearance of the future use of the practice or procedure if its recurrent nature is clearly stated or described in the submission or is expressly recognized in the final response of the Attorney General on the merits of the submission.

§ 51.15 Enabling legislation and contingent or nonuniform requirements.

(a) With respect to legislation (1) that enables or permits the State or its political subunits to institute a voting change or (2) that requires or enables the State or its political subunits to institute a voting change upon some future event or if they satisfy certain criteria, the failure of the Attorney General to interpose an objection does not exempt from the preclearance requirement the implementation of the particular voting change that is enabled, permitted, or required, unless that implementation is explicitly included and described in the submission of such parent legislation.

(b) For example, such legislation includes (1) legislation authorizing counties, cities, school districts, or agencies or officials of the State to institute any of the changes described in § 51.13, (2) legislation requiring a political subunit that chooses a certain form of government to follow specified election procedures, (3) legislation requiring or authorizing political subunits of a certain size or a certain location to institute specified changes, (4) legislation requiring a political subunit to follow certain practices or procedures unless the subunit's charter or ordinances specify to the contrary.

§ 51.16 Distinction between changes in procedure and changes in substance.

The failure of the Attorney General to interpose an objection to a procedure for instituting a change affecting voting does not exempt the substantive change from the preclearance requirement. For example, if the procedure for the approval of an annexation is changed from city council approval to approval in a referendum, the preclearance of the new procedure does not exempt an annexation accomplished under the new

procedure from the preclearance requirement.

§ 51.17 Special elections.

(a) The conduct of a special election (e.g., an election to fill a vacancy; an initiative, referendum, or recall election; or a bond issue election) is subject to the preclearance requirement to the extent that the jurisdiction makes changes in the practices or procedures to be followed.

(b) Any discretionary setting of the date for a special election or scheduling of events leading up to or following a special election is subject to the preclearance requirement.

(c) A jurisdiction conducting a referendum election to ratify a change in a practice or procedure that affects voting may submit the change to be voted on at the same time that it submits any changes involved in the conduct of the referendum election. A jurisdiction wishing to receive preclearance for the change to be ratified should state clearly that such preclearance is being requested. See § 51.22 of this part.

§ 51.18 Court-ordered changes.

(a) *In general.* Changes affecting voting that are ordered by a Federal court are subject to the preclearance requirement of Section 5 to the extent that they reflect the policy choices of the submitting authority.

(b) *Subsequent changes.* Where a court-ordered change is not itself subject to the preclearance requirement, subsequent changes necessitated by the court order but decided upon by the jurisdiction remain subject to preclearance. For example, voting precinct and polling place changes made necessary by a court-ordered redistricting plan are subject to Section 5 review.

(c) *In emergencies.* A Federal court's authorization of the emergency interim use without preclearance of a voting change does not exempt from Section 5 review any use of the practice not explicitly authorized by the court.

§ 51.19 Request for notification concerning voting litigation.

A jurisdiction subject to the preclearance requirement of Section 5 that becomes involved in any litigation concerning voting is requested promptly to notify the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. Such notification will not be considered a submission under Section 5.

Subpart B—Procedures for Submission to the Attorney General

§ 51.20 Form of submissions.

Submissions may be made in letter or any other written form.

§ 51.21 Time of submissions.

Changes affecting voting should be submitted as soon as possible after they become final.

§ 51.22 Premature submissions.

The Attorney General will not consider on the merits: (a) Any proposal for a change affecting voting submitted prior to final enactment or administrative decision or (b) any proposed change which has a direct bearing on another change affecting voting which has not received Section 5 preclearance. However, with respect to a change for which approval by referendum, a State or Federal court or a Federal agency is required, the Attorney General may make a determination concerning the change prior to such approval if the change is not subject to alteration in the final approving action and if all other action necessary for approval has been taken.

§ 51.23 Party and jurisdiction responsible for making submissions.

(a) Changes affecting voting shall be submitted by the chief legal officer or other appropriate official of the submitting authority or by any other authorized person on behalf of the submitting authority. When one or more counties or other political subunits within a State will be affected, the State may make a submission on their behalf. Where a State is covered as a whole, State legislation (except legislation of local applicability) or other changes undertaken or required by the State shall be submitted by the State.

(b) A change effected by a political party (see § 51.7) may be submitted by an appropriate official of the political party.

§ 51.24 Address for submissions.

Changes affecting voting shall be mailed or delivered to the Chief, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and first page of the submission shall be clearly marked: Submission under Section 5 of the Voting Rights Act.

§ 51.25 Withdrawal of submissions.

(a) A jurisdiction may withdraw a submission at any time prior to a final decision by the Attorney General. Notice of the withdrawal of a submission must be made in writing, addressed to the Chief, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The submission shall be deemed withdrawn upon receipt of the notice.

(b) Notice of withdrawals will be given to interested parties registered under § 51.32.

Subpart C—Contents of Submissions

§ 51.26 General.

(a) The source of any information contained in a submission should be identified.

(b) Where an estimate is provided in lieu of more reliable statistics, the submission should identify the name, position, and qualifications of the person responsible for the estimate and should briefly describe the basis for the estimate.

(c) Submissions should be no longer than is necessary for the presentation of the appropriate information and materials.

(d) The Attorney General will not accept for review any submission that fails to describe the subject change in sufficient particularity to satisfy the minimum requirements of § 51.27(c).

(e) A submitting authority that desires the Attorney General to consider any information supplied as part of an earlier submission may incorporate such information by reference by stating the date and subject matter of the earlier submission and identifying the relevant information.

(f) Where information requested by this subpart is relevant but not known or available, or is not applicable, the submission should so state.

(g) The following Office of Management and Budget control number under the Paperwork Reduction Act applies to the collection of information requirements contained in these Procedures: OMB No. 1190–0001 (expires February 29, 1988). See 5 CFR 1320.13.

§ 51.27 Required contents.

Each submission should contain the following information or documents to enable the Attorney General to make the required determination pursuant to Section 5 with respect to the submitted change affecting voting:

(a) A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting.

(b) A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed.

(c) If the change affecting voting either is not readily apparent on the face of the documents, provided under paragraphs

(a) and (b) of this section or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

(d) The name, title, address, and telephone number of the person making the submission.

(e) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

(f) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

(g) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).

(h) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

(i) The date of adoption of the change affecting voting.

(j) The date on which the change is to take effect.

(k) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

(l) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

(m) A statement of the reasons for the change.

(n) A statement of the anticipated effect of the change on members of racial or language minority groups.

(o) A statement identifying any past or pending litigation concerning the change or related voting practices.

(p) A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

(q) For redistrictings and annexations: the items listed under § 51.28 (a)(1) and (b)(1); for annexations only: the items listed under § 51.28(c)(3).

(r) Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in § 51.28 and is most likely to be needed with respect to redistrictings, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type. When such information is required, but not provided, the Attorney General shall notify the submitting authority in the manner provided in § 51.37.

§ 51.28 Supplemental contents.

Review by the Attorney General will be facilitated if the following information, where pertinent, is provided in addition to that required by §51.27.

(a) *Demographic information.* (1) Total and voting age population of the affected area before and after the change, by race and language group. If such information is contained in publications of the U.S. Bureau of the Census, reference to the appropriate volume and table is sufficient.

(2) The number of registered voters for the affected area by voting precinct before and after the change, by race and language group.

(3) Any estimates of population, by race and language group, made in connection with the adoption of the change.

(b) *Maps.* Where any change is made that revises the constituency that elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or that changes voting precinct boundaries, polling place locations, or voter registration sites, maps in duplicate of the area to be affected, containing the following information:

(1) The prior and new boundaries of the voting unit or units.

(2) The prior and new boundaries of voting precincts.

(3) The location of racial and language minority groups.

(4) Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units.

(5) The location of prior and new polling places.

(6) The location of prior and new voter registration sites.

(c) *Annexations.* For annexations, in addition to that information specified elsewhere, the following information:

(1) The present and expected future use of the annexed land (e.g., garden apartments, industrial park).

(2) An estimate of the expected population, by race and language group, when anticipated development, if any, is completed.

(3) A statement that all prior annexations subject to the preclearance requirement have been submitted for reivew, or a statement that identifies all annexations subject to the preclearance requirement that have not been submitted for review. See § 51.61(b).

(d) *Election returns.* Where a change may affect the electoral influence of a racial or language minority group, returns of primary and general elections conducted by or in the jurisdiction, containing the following information:

(1) The name of each candidate.

(2) The race or language group of each candidate, if known.

(3) The position sought by each candidate.

(4) The number of votes received by each candidate, by voting precinct.

(5) The outcome of each contest.

(6) The number of registered voters, by race and language group, for each voting precinct for which election returns are furnished. Information with respect to elections held during the last ten years will normally be sufficient.

(e) *Language usage.* Where a change is made affecting the use of the language of a language minority group in the electoral process, information that will enable the Attorney General to determine whether the change is consistent with the minority language requirements of the Act. The Attorney General's interpretation of the minority language requirements of the Act is contained in Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 CFR Part 55.

(f) *Publicity and participation.* For submissions involving controversial or potentially controversial changes, evidence of public notice, of the opportunity for the public to be heard, and of the opportunity for interested parties to participate in the decision to adopt the proposed change and an account of the extent to which such participation, especially by minority group members, in fact took place. Examples of materials demonstrating public notice or participation include:

(1) Copies of newspaper articles discussion the proposed change.

(2) Copies of public notices that describe the proposed change and invite public comment or participation in hearings and statements regarding where such public notices appeared (e.g., newspaper, radio, or television, posted in public buildings, sent to indentified individuals or groups).

(3) Minutes or accounts of public hearings concerning the proposed change.

(4) Statements, speeches, and other public communications concerning the proposed change.

(5) Copies of comments from the general public.

(6) Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.

(g) *Availability of the submission.* Copies of public notices that announce the submission to the Attorney General, inform the public that a complete duplicate copy of the submission is available for public inspection (e.g., at the county courthouse) and invite comments for the consideration of the Attorney general and statements regarding where such public notices appeared.

(h) *Minority group contacts.* For submissions from jurisdictions having a significant minority population, the names, addresses, telephone numbers, and organizational affiliation (if any) of racial or language minority group members residing in the jurisdiction who can be expected to be familiar with the proposed change or who have been active in the political process.

Subpart D—Communications From Individuals and Groups

§ 51.29 Communications concerning voting changes.

Any individual or group may send to the Attorney General information concerning a change affecting voting in a jurisdiction to which Section 5 applies.

(a) Communications may be in the form of a letter stating the name, address, and telephone number of the individual or group, describing the alleged change affecting voting and setting forth evidence regarding whether the change has or does not have a discriminatory purpose or effect, or simply bringing to the attention of the Attorney General the fact that a voting change has occurred.

(b) The communications should be mailed to the Chief, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and first page should be marked: Comment under Section 5 of the Voting Rights Act.

(c) Comments by individuals or groups concerning any change affecting voting may be sent at any time; however, individuals and groups are encouraged to comment as soon as they learn of the change.

(d) Department of Justice officials and employees shall comply with the request of any individual that his or her identity not be disclosed to any person outside the Department, to the extent permitted by the Freedom of Information Act, 5 U.S.C. 552. In addition, whenever it appears to the Attorney General that disclosure of the identity of an individual who provided information regarding a change affecting voting "would constitute a clearly unwarranted invasion of personal privacy" under 5 U.S.C. 552(b)(6), the identity of the individual shall not be disclosed to any person outside the Department.

(e) When an individual or group desires the Attorney General to consider information that was supplied in connection with an earlier submission, it is not necessary to resubmit the information but merely to identify the earlier submission and the relevant information.

§ 51.30 Action on communications from individuals or groups.

(a) If there has already been a submission received of the change affecting voting brought to the attention of the Attorney General by an individual or group, any evidence from the individual or group shall be considered along with the materials submitted and materials resulting from any investigation.

(b) If such a submission has not been received, the Attorney General shall advise the appropriate jurisdiction of the requirement of Section 5 with respect to the change in question.

§ 51.31 Communications concerning voting suits.

Individuals and groups are urged to notify the Chief, Voting Section, Civil Rights Division, of litigation concerning voting in jurisdictions subject to the requirement of Section 5.

§ 51.32 Establishment and maintenance of registry of interested individuals and groups.

The Attorney General shall establish and maintain a Registry of Interested Individuals and Groups, which shall contain the name and address of any individual or group that wishes to receive notice of Section 5 submissions. Information relating to this registry and to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a *et seq.*, is contained in JUSTICE/CRT-004. 48 FR 5334 (Feb. 4, 1983).

Subpart E—Processing of Submissions

§ 51.33 Notice to registrants concerning submissions.

Weekly notice of submissions that have been received will be given to the individuals and groups who have registered for this purpose under § 51.32. Such notice will also be given when Section 5 declaratory judgment actions are filed or decided.

§ 51.34 Expedited consideration.

(a) When a submitting authority is required under State law or local ordinance or otherwise finds it necessary to implement a change within the 60-day period following submission, it may request that the submission be given expedited consideration. The submission should explain why such consideration is needed and provide the date by which a determination is required.

(b) Jurisdictions should endeavor to plan for changes in advance so that expedited consideration will not be required and should not routinely request such consideration. When a submitting authority demonstrates good cause for expedited consideration the Attorney General will attempt to make a decision by the date requested. However, the Attorney General cannot guarantee that such consideration can be given.

(c) Notice of the request for expedited consideration will be given to interested parties registered under § 51.32

§ 51.35 Disposition of inappropriate submissions.

The Attorney General will make no response on the merits with respect to an inappropriate submission but will notify the submitting authority of the inappropriateness of the submission. Such notification will be made as promptly as possible and no later than the 60th day following receipt and will include an explanation of the inappropriateness of the submission. Inappropriate submissions include the submission of changes that do not affect voting (see, e.g., § 51.13), the submission of standards, practices, or procedures that have not been changed (see, e.g., §§ 51.4, 51.14), the submission of changes that affect voting but are not subject to the requirement of Section 5 (see, e.g., § 51.18), premature submissions (see §§ 51.22, 51.61(b)), submissions by jurisdictions not subject to the preclearance requirement (see §§ 51.4, 51.5), and deficient submissions (see § 51.26(d)).

§ 51.36 Release of information concerning submission.

The Attorney General shall have the discretion to call to the attention of the submitting authority or any interested individual or group information or comments related to a submission.

§ 51.37 Obtaining information from the submitting authority.

(a) If a submission does not satisfy the requirements of § 51.27, the Attorney General may request from the submitting authority any omitted information considered necessary for the evaluation of the submission. The request shall be made by letter and shall be made within the 60-day period and as promptly as possible after receipt of the original submission. See also § 51.26(d).

(b) A copy of the request shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(c) The Attorney General shall notify the submitting authority that a new 60-day period in which the Attorney General may interpose an objection shall commence upon the receipt of a response from the submitting authority that provides the information requested or states that the information is unavailable. The Attorney General can request further information within the new 60-day period, but such a further request shall not suspend the running of the 60-day period, nor shall the receipt of a response to such a request operate to begin a new 60-day period.

(d) The receipt of a response from the submitting authority that neither provides the information requested nor states that such information is unavailable shall not commence a new 60-day period. It is the practice of the Attorney General to notify the submitting authority that its response is inadequate and to provide such notification as soon as possible after the receipt of the inadequate response.

(e) If, after a request for further information is made pursuant to this section, the information requested becomes available to the Attorney General from a source other than the submitting authority, the Attorney General shall promptly notify the submitting authority by letter, and the 60-day period will commence upon the date of such notification.

(f) Notice of the request for and receipt of further information will be given to interested parties registered under § 51.32.

§ 51.38 Obtaining information from others.

(a) The Attorney General may at any time request relevant information from governmental jurisdictions and from interested groups and individuals and may conduct any investigation or other inquiry that is deemed appropriate in making a determination.

(b) If a submission does not contain evidence of adequate notice to the public, and the Attorney General believes that such notice is essential to a determination, steps will be taken by the Attorney General to provide public notice sufficent to invite interested or affected persons to provide evidence as to the presence or absence of a discriminatory purpose or effect. The submitting authority shall be advised when any such steps are taken.

§ 51.39 Supplementary submissions.

(a) When a submitting authority provides documents and written information materially supplementing a submission (or a request for reconsideration of an objection) for evaluation as if part of its original submission, or, before the expiration of the 60-day period, makes a second submission such that the two submissions cannot be independently considered, the 60-day period for the original submission will be calculated from the receipt of the supplementary information or from the second submission.

(b) The Attorney General will notify the submitting authority when the 60-day period for a submission is recalculated from the receipt of supplementary information or from the receipt of a second related submission.

(c) Notice of the receipt of supplementary information will be given to interested parties registered under § 51.32.

§ 51.40 Failure to complete submissions.

If after 60 days the submitting authority has not provided further information in response to a request made pursuant to § 51.37(a), the Attorney General, absent extenuating circumstances and consistent with the burden of proof under Section 5 described in § 51.52(a) and (c), may object to the change, giving notice as specified in § 51.44.

§ 51.41 Notification of decision not to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose no objection to a submitted change affecting voting.

(b) The notification shall state that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change.

(c) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

§ 51.42 Failure of the Attorney General to respond.

It is the practice and intention of the Attorney General to respond to each submission within the 60-day period. However, the failure of the Attorney General to make a written response within the 60-day period constitutes preclearance of the submitted change, provided the submission is addressed as specified in § 51.24 and is appropriate for a response on the merits as described in § 51.35.

§ 51.43 Reexamination of decision not to object.

After notification to the submitting authority of a decision to interpose no objection to a submitted change affecting voting has been given, the Attorney General may reexamine the submission if, prior to the expiration of the 60-day period, information indicating the possibility of the prohibited discriminatory purpose or affect is received. In this event, the Attorney General may interpose an objection provisionally and advise the submitting authority that examination of the change in light of the newly raised issues will continue and that a final decision will be rendered as soon as possible.

§ 51.44 Notification of decision to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose an objection. The reasons for the decision shall be stated.

(b) The submitting authority shall be advised that the Attorney General will reconsider an objection upon a request by the submitting authority.

(c) The submitting authority shall be advised further that notwithstanding the objecton it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited discriminatory purpose or effect.

(d) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(e) Notice of the decision to interpose an objection will be given to interested parties registered under § 51.32.

§ 51.45 Request for reconsideration.

(a) The submitting authority may at any time request the Attorney General to reconsider an objection.

(b) Requests may be in letter or any other written form and should contain relevant information or legal argument.

(c) Notice of the request will be given to any party who commented on the submission or requested notice of the Attorney General's action thereon and to interested parties registered under

§ 51.32. In appropriate cases the Attorney General may request the submitting authority to give local public notice of the request.

§ 51.46 Reconsideration of objection at the instance of the Attorney General.

(a) Where there appears to have been a substantial change in operative fact or relevant law, an objection may be reconsidered, if it is deemed appropriate, at the instance of the Attorney General.

(b) Notice of such a decision to reconsider shall be given to the submitting authority, to any party who commented on the submission or requested notice of the Attorney General's action thereon, and to interested parties registered under § 51.32, and the Attorney General shall decide whether to withdraw or to continue the objection only after such persons have had a reasonable opportunity to comment.

§ 51.47 Conference.

(a) A submitting authority that has requested reconsideration of an objection pursuant to § 51.45 may request a conference to produce information or legal argument in support of reconsideration.

(b) Such a conference shall be held at a location determined by the Attorney General and shall be conducted in an informal manner.

(c) When a submitting authority requests such a conference, individuals or groups that commented on the change prior to the Attorney General's objection or that seek to participate in response to any notice of a request for reconsideration shall be notified and given the opportunity to confer.

(d) The Attorney General shall have the discretion to hold separate meetings to confer with the submitting authority and other interested groups or individuals.

(e) Such conferences will be open to the public or to the press only at the discretion of the Attorney General and with the agreement of the participating parties.

§ 51.48 Decision after reconsideration.

(a) The Attorney General shall within the 60-day period following the receipt of a reconsideration request or following notice given under § 51.46(b) notify the submitting authority of the decision to continue or withdraw the objection, provided that the Attorney General shall have at least 15 days following any conference that is held in which to decide. (See also § 51.39(a).) The reasons for the decision shall be stated.

(b) The objection shall be withdrawn if the Attorney General is satisfied that the change does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group.

(c) If the objection is not withdrawn, the submitting authority shall be advised that notwithstanding the objection it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited purpose or effect.

(d) An objection remains in effect until either it is withdrawn by the Attorney General or a declaratory judgment with respect to the change in question is entered by the U.S. District Court for the District of Columbia.

(e) A copy of the notification shall be sent to any party who has commented on the submission or reconsideration or has requested notice of the Attorney General's action thereon.

(f) Notice of the decision after reconsideration will be given to interested parties registered under § 51.32.

§ 51.49 Absence of judicial review.

The decision of the Attorney General not to object to a submitted change or to withdraw an objection is not reviewable. The preclearance by the Attorney General of a voting change does not constitute the certification that the voting change satisfies any other requirement of the law beyond that of Section 5, and, as stated in Section 5, "(n)either an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedures."

§ 51.50 Records concerning submissions.

(a) Section 5 files: The Attorney General shall maintain a Section 5 file for each submission, containing the submission, related written materials, correspondence, memoranda, investigative reports, notations concerning conferences with the submitting authority or any interested individual or group, and copies of any letters from the Attorney General concerning the submission.

(b) Objection files: Brief summaries regarding each submission and the general findings of the Department of Justice investigation and decision concerning it will be prepared when a decision to interpose, continue, or withdraw an objection is made. Files of these summaries, arranged by jurisdiction and by the date upon which such decision is made, will be maintained.

(c) Computer file: Records of submissions and of their dispositions by the Attorney General shall be electronically stored and periodically retrieved in the form of computer printouts.

(d) The contents of the above-described files, either in paper or in microfiche form, shall be available for inspection and copying by the public during normal business hours at the Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. Materials that are exempt from inspection under the Freedom of Information Act, 5 U.S.C. 552(b), may be withheld at the discretion of the Attorney General. Communications from individuals who have requested confidentially or with respect to whom the Attorney General has determined that confidentiality is appropriate under § 51.29(d) shall be available only as provided by § 51.29(d). Applicable fees, if any, for the copying of the contents of these files are contained in the Department of Justice regulations implementing the Freedom of Information Act, 28 CFR 16.10.

Subpart F—Determinations by the Attorney General

§ 51.51 Purpose of this subpart.

The purpose of this subpart is to inform submitting authorities and other interested parties of the factors that the Attorney General considers relevant and of the standards by which the Attorney General will be guided in making substantive determinations under Section 5 and in defending Section 5 declaratory judgment actions.

§ 51.52 Basic standard.

(a) *Surrogate for the court.* Section 5 provides for submission of a voting change to the Attorney General as an alternative to the seeking of a declaratory judgment from the U.S. District Court for the District of Columbia. Therefore, the Attorney General shall make the same determination that would be made by the court in an action for a declaratory judgment under Section 5: Whether the submitted change has the purpose or will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. The burden of proof is on a submitting authority when it

submits a change to the Attorney General for preclearance, as it would be if the proposed change were the subject of a declaratory judgment action in the U.S. District Court for the District of Columbia. See *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328, 335 (1966).

(b) *No objection.* If the Attorney General determines that the submitted change does not have the prohibited purpose or effect, no objection shall be interposed to the change.

(c) *Objection.* An objection shall be interposed to a submitted change if the Attorney General is unable to determine that the change is free of discriminatory purpose and effect. This includes those situations where the evidence as to the purpose or effect of the change is conflicting and the Attorney General is unable to determine that the change is free of discriminatory purpose and effect.

§ 51.53 Information considered.

The Attorney General shall base a determination on a review of material presented by the submitting authority, relevant information provided by individuals or groups, and the results of any investigation conducted by the Department of Justice.

§ 51.54 Discriminatory effect.

(a) *Retrogression.* A change affecting voting is considered to have a discriminatory effect under Section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively. See *Beer* v. *United States*, 425 U.S. 130, 140–42 (1976).

(b) *Benchmark.* (1) In determining whether a submitted change is retrogressive the Attorney General will normally compare the submitted change to the voting practice or procedure in effect at the time of the submission. If the existing practice or procedure upon submission was not in effect on the jurisdiction's applicable date for coverage (specified in the Appendix) and is not otherwise legally enforcebale under Section 5, it cannot serve as a benchmark, and, except as provided in subparagraph (b)(4) below, the comparison shall be with the last legally enforceable practice or procedure used by the jurisdiction.

(2) The Attorney General will make the comparison based on the conditions existing at the time of the submission.

(3) The implementation and use of an unprecleared voting change subject to Section 5 review under § 51.18(a) does not operate to make that unprecleared change a benchmark for any subsequent change submitted by the jurisdiction. See § 51.18(c).

(4) Where at the time of submission of a change for Section 5 review there exists no other lawful practice or procedure for use as a benchmark (e.g., where a newly incorporated college district selects a method of election) the Attorney General's preclearance determination will necessarily center on whether the submitted change was designed or adopted for the purpose of discriminating against members of racial or language minority groups.

§ 51.55 Consistency with constitutional and statutory requirements.

(a) *Consideration in general.* In making a determination the Attorney General will consider whether the change is free of discriminatory purpose and retrogressive effect in light of, and with particular attention being given to, the requirements of the 14th, 15th, and 24th amendments to the Constitution, 42 U.S.C. 1971(a) and (b), Sections 2, 4(a), 4(f)(2), 4(f)(4), 201, 203(c), and 208 of the Act, and other constitutional and statutory provisions designed to safeguard the right to vote from denial or abridgment on account of race, color, or membership in a language minority group.

(b) *Section 2.* (1) Preclearance under Section 5 of a voting change will not preclude any legal action under Section 2 by the Attorney General if implementation of the change subsequently demonstrates that such action is appropriate. (2) In those instances in which the Attorney General concludes that, as proposed, the submitted change is free of discriminatory purpose and retrogressive effect, but also concludes that a bar to implementation of the change is necessary to prevent a clear violation of amended Section 2, the Attorney General shall withhold Section 5 preclearance.

§ 51.56 Guidance from the courts.

In making determinations the Attorney General will be guided by the relevant decisions of the Supreme Court of the United States and of other Federal courts.

§ 51.57 Relevant factors.

Among the factors the Attorney General will consider in making determinations with respect to the submitted changes affecting voting are the following:

(a) The extent to which a reasonable and legitimate justification for the change exists.

(b) The extent to which the jurisdiction followed objective guidelines and fair and conventional procedures in adopting the change.

(c) The extent to which the jurisdiction afforded members of racial and language minority groups an opportunity to participate in the decision to make the change.

(d) The extent to which the jurisdiction took the concerns of members of racial and language minority groups into account in making the change.

§ 51.58 Representation.

(a) *Introduction.* This section and the sections that follow set forth factors—in addition to those set forth above—that the Attorney General considers in reviewing redistrictings (see § 51.59), changes in electoral systems (see § 51.60), and annexations (see § 51.61).

(b) *Background factors.* In making determinations with respect to these changes involving voting practices and procedures, the Attorney General will consider as important background information the following factors:

(1) The extent to which minorities have been denied an equal opportunity to participate meaningfully in the political process in the jurisdiction.

(2) The extent to which minorities have been denied an equal opportunity to influence elections and the decisionmaking of elected officials in the jurisdiction.

(3) The extent to which voting in the jurisdiction is racially polarized and political activities are racially segregated.

(4) The extent to which the voter registration and election participation of minority voters have been adversely affected by present or past discrimination.

§ 51.59 Redistrictings.

In determining whether a submitted redistricting plan has the prohibited purpose or effect the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(a) The extent to which malapportioned districts deny or abridge the right to vote of minority citizens.

(b) The extent to which minority voting strength is reduced by the proposed redistricting.

(c) The extent to which minority concentrations are fragmented among different districts.

(d) The extent to which minorities are overconcentrated in one or more districts.

(e) The extent to which available alternative plans satisfying the jurisdiction's legitimate governmental interests were considered.

(f) The extent to which the plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries.

(g) The extent to which the plan is inconsistent with the jurisdiction's stated redistricting standards.

§ 51.60 Changes in electorial systems.

In making determinations with respect to changes in electoral systems (e.g., changes to or from the use of at-large elections, changes in the size of elected bodies) the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(a) The extent to which minority voting strength is reduced by the proposed change.

(b) The extent to which minority concentrations are submerged into larger electoral units.

(c) The extent to which available alternative systems satisfying the jurisdiction's legitimate governmental interests were considered.

§ 51.61 Annexations.

(a) *Coverage.* Annexation, even of uninhabited land, are subject to Section 5 preclearance to the extent that they alter or are calculated to alter the composition of a jurisdiction's electorate. In analyzing annexations under Section 5, the Attorney General only considers the purpose and effect of the annexation as it pertains to voting.

(b) *Section 5 review.* It is the practice of the Attorney General to review all of a jurisdiction's unprecleared annexations together. *See City of Pleasant Grove* v. *United States,* C.A. No. 80–2589 (D.D.C. Oct. 7, 1981).

(c) *Relevant factors.* In making determinations with respect to annexations, the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(1) The extent to which a jurisdiction's annexations reflect the purpose or have the effect of excluding minorities while including other similarly situated persons.

(2) The extent to which the annexations reduce a jurisdiction's minority population percentage, either at the time of the submission or, in view of the intended use, for the reasonably foreseeable future.

3) Whether the electoral system to be used in the jurisdiction fails fairly to reflect minority voting strength as it exists in the post-annexation jurisdiction. See *City of Richmond* v. *United States,* 433 U.S. 358, 367–72 (1975).

Subpart G—Sanctions

§ 51.62 Enforcement by the Attorney General.

(a) The Attorney General is authorized to bring civil actions for appropriate relief against violations of the Act's provisions, including Section 5. See Section 12(d).

(b) Certain violations of Section 5 may be subject to criminal sanctions. See Section 12 (a) and (c).

§ 51.63 Enforcement by private parties.

Private parties have standing to enforce Section 5.

§ 51.64 Bar to termination of coverage (bailout).

(a) Section 4(a) of the Act sets out the requirements for the termination of coverage (bailout) under Section 5. See § 51.5. Among the requirements for bailout is compliance with Section 5, as described in Section 4(a), during the ten years preceding the filing of the bailout action and during its pendency.

(b) In defending bailout actions, the Attorney General will not consider as a bar to bailout under Section 4(a)(1)(E) a Section 5 objection to a submitted voting standard, practice, or procedure if the objection was subsequently withdrawn on the basis of a determination by the Attorney General that it had originally been interposed as a result of the Attorney General's misinterpretation of fact or mistake in the law, or if the unmodified voting standard, practice, or procedure that was the subject of the objection received Section 5 preclearance by means of a declaratory judgment from the U.S. District Court for the District of Columbia.

(c) Notice will be given to interested parties registered under § 51.32 when bailout actions are filed or decided.

Subpart H—Petition To Change Procedures

§ 51.65 Who may petition.

Any jurisdiction or interested individual or group may petition to have these procedural guidelines amended.

§ 51.66 Form of petition.

A petition under this subpart may be made by informal letter and shall state the name, address, and telephone number of the petitioner, the change requested, and the reasons for the change.

§ 51.67 Disposition of petition.

The Attorney General shall promptly consider and dispose of a petition under this subpart and give notice of the disposition, accompanied by a simple statement of the reasons, to the petitioner.

Appendix—Jurisdictions Covered Under Section 4(b) of the Voting Rights Act, as Amended

The preclearance requirement of Section 5 of the Voting Rights Act, as amended, applies in the following jurisdictions. The applicable date is the date that was used to determine coverage and the date after which changes affecting voting are subject to the preclearance requirement.

Some jurisdictions, for example, Yuba County, California, are included more than once because they have been determined on more than one occasion to be covered under Section 4(b).

Jurisdiction	Applicable Date	Federal Register citation	
		Volume and page	Date
Alabama	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Alaska	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Arizona	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
California:			
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Merced County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Monterey County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuba County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuba County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Florida:			
Collier County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Hardee County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Hendry County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.

Jurisdiction	Applicable Date	Federal Register citation	
		Volume and page	Date
Hillsborough County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Monroe County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Georgia	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Louisiana	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Michigan:			
Allegan County:			
Clyde Township	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Saginaw County:			
Buena Vista Township	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Mississippi	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
New Hampshire:			
Cheshire County:			
Rindge Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Coos County:			
Millsfield Township	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Pinkhams Grant	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Stewartstown Town	Nov. 1, 1968	39 FR 16912	May. 10, 1974.
Stratford Town	Nov. 1, 1968	39 FR 16912	May. 10, 1974.
Grafton County:			
Benton Town	Nov. 1, 1968	39 FR 16912	May. 10, 1974.
Hillsborough County:			
Antrim Town	Nov. 1, 1968	39 FR 16912	May. 10, 1974.
Merrimack County:			
Boscawen Town	Nov. 1, 1968	39 FR 16912	May. 10, 1974.
Rockingham County:			
Newington Town	Nov. 1, 1968	39 FR 16912	May. 10, 1974.
Sullivan County:			
Unity Town	Nov. 1, 1968	39 FR 16912	May. 10, 1974.
New York:			
Bronx County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Bronx County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Kings County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
New York County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
North Carolina:			
Anson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Beaufort County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Bertie County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Bladen County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Camden County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.
Caswell County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Chowan County	Nov. 1, 1964	30 FR 9897	Aug.7, 1965.
Cleveland County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Craven County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Cumberland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Edgecombe County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Franklin County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Gaston County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Gates County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Granville County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Greene County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Guilford County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Halifax County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Harnett County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Hertford County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Hoke County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Jackson County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Lee County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Lenoir County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Martin County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
Nash County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Northampton County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Onslow County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Pasquotank County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Perquimans County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.
Person County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Pitt County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Robeson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Rockingham County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Scotland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Union County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Vance County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Washington County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
Wayne County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Wilson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
South Carolina	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
South Dakota:			
Shannon County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Todd County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Texas	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975
Virginia	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.

The following political subdivisions in States subject to statewide coverage are also covered individually:

Jurisdiction	Applicable date	FEDERAL REGISTER, citation,	
		Volume and page	Date
Arizona:			
Apache County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Apache County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975
Cochise County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Coconino County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Coconino County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Mohave County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Navajo County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Navajo County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Pima County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Pinal County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Pinal County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Santa Cruz County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuma County	Nov. 1, 1964	31 FR 982	Jan. 25, 1966.

[FR Doc. 87-127 Filed 1-5-87; 8:45 am]

BILLING CODE 4410-01-M

Federal Register

Tuesday
January 6, 1987

Part III

The President

Presidential Documents

Executive Order 12578 of December 31, 1986

Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 144 of Public Law 99–500 and section 144 of Public Law 99–591, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay and salaries of the following statutory pay systems are adjusted as set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Department of Medicine and Surgery, Veterans Administration (38 U.S.C. 4107) at Schedule 3.

Sec. 2. *Senior Executive Service.* Pursuant to the provisions of section 5382 of title 5, United States Code, the rates of basic pay for members of the Senior Executive Service are adjusted as set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive Salaries.* Pursuant to the Executive Salary Cost-of-Living Adjustment Act (Public Law 94–82; 89 Stat. 419), the rates of pay and salaries are adjusted for the following offices and positions as set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5316) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and Congressional Salaries (2 U.S.C. 31) at Schedule 6; and

(c) Salaries for justices and judges (28 U.S.C. 5, 44(d), 135, 252), as required by section 406 of the Judiciary Appropriation Act, 1987, as incorporated in section 101(b) of Public Law 99–500 and section 101(b) of Public Law 99–591, and for other judicial officers (28 U.S.C. 153(a), 172(b)) at Schedule 7.

Sec. 4. *Uniformed Services.* Pursuant to section 601 of Public Law 99–661, the rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) for members of the uniformed services are adjusted as set forth at Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Effective Dates.* The adjustments in rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services are effective on January 1, 1987. All other schedules provided for herein are effective on the first day of the first applicable pay period beginning on or after January 1, 1987.

Sec. 6. Executive Order No. 12496 of December 28, 1984, as amended, is superseded.

Ronald Reagan

THE WHITE HOUSE,
December 31, 1986.

Billing code 3195-01-M

SCHEDULE 1—GENERAL SCHEDULE

	1	2	3	4	5	6	7	8	9	10
GS-1	$9,619	$9,940	$10,260	$10,579	$10,899	$11,087	$11,403	$11,721	$11,735	$12,036
2	10,816	11,073	11,430	11,735	11,866	12,215	12,564	12,913	13,262	13,611
3	11,802	12,195	12,588	12,981	13,374	13,767	14,160	14,553	14,946	15,339
4	13,248	13,690	14,132	14,574	15,016	15,458	15,900	16,342	16,784	17,226
5	14,822	15,316	15,810	16,304	16,798	17,292	17,786	18,280	18,774	19,268
6	16,521	17,072	17,623	18,174	18,725	19,276	19,827	20,378	20,929	21,480
7	18,358	18,970	19,582	20,194	20,806	21,418	22,030	22,642	23,254	23,866
8	20,333	21,011	21,689	22,367	23,045	23,723	24,401	25,079	25,757	26,435
9	22,458	23,207	23,956	24,705	25,454	26,203	26,952	27,701	28,450	29,199
10	24,732	25,556	26,380	27,204	28,028	28,852	29,676	30,500	31,324	32,148
11	27,172	28,078	28,984	29,890	30,796	31,702	32,608	33,514	34,420	35,326
12	32,567	33,653	34,739	35,825	36,911	37,997	39,083	40,169	41,255	42,341
13	38,727	40,018	41,309	42,600	43,891	45,182	46,473	47,764	49,055	50,346
14	45,763	47,288	48,813	50,338	51,863	53,388	54,913	56,438	57,963	59,488
15	53,830	55,624	57,418	59,212	61,006	62,800	64,594	66,388	68,182	69,976
16	63,135	65,240	67,345	69,450	71,555*	73,660*	75,765*	77,870*	79,975*	
17	73,958*	76,423*	78,888*	81,353*	83,818*					
18	86,682*									

* The rate of basic pay payable to employees at these rates is limited to the rate payable for level V of the Executive Schedule, which is $70,800.

SCHEDULE 2—FOREIGN SERVICE SCHEDULE

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$53,830	$43,619	$35,344	$28,640	$23,207	$20,746	$18,547	$16,580	$14,822
2	55,445	44,928	36,404	29,499	23,903	21,368	19,103	17,077	15,267
3	57,108	46,275	37,496	30,384	24,620	22,009	19,677	17,590	15,725
4	58,821	47,664	38,621	31,296	25,359	22,670	20,267	18,117	16,196
5	60,586	49,094	39,780	32,235	26,120	23,350	20,875	18,661	16,682
6	62,404	50,566	40,973	33,202	26,903	24,050	21,501	19,221	17,183
7	64,276	52,083	42,203	34,198	27,710	24,772	22,146	19,797	17,698
8	66,204	53,646	43,469	35,224	28,542	25,515	22,810	20,391	18,229
9	68,190	55,255	44,773	36,280	29,398	26,280	23,495	21,003	18,776
10	69,976	56,913	46,116	37,369	30,280	27,069	24,200	21,633	19,339
11	69,976	58,620	47,499	38,490	31,188	27,881	24,926	22,282	19,920
12	69,976	60,379	48,924	39,644	32,124	28,717	25,673	22,951	20,517
13	69,976	62,190	50,392	40,834	33,088	29,579	26,444	23,639	21,133
14	69,976	64,056	51,904	42,059	34,080	30,466	27,237	24,348	21,767

SCHEDULE 3--DEPARTMENT OF MEDICINE AND SURGERY SCHEDULES
VETERANS ADMINISTRATION

Section 4103 Schedule

Chief Medical Director	$97,206***
Deputy Chief Medical Director	93,248**
Associate Deputy Chief Medical Director	89,314*
Assistant Chief Medical Director	86,682*

	Minimum	Maximum
Medical Director	$73,958*	$83,818*
Director of Nursing Service	73,958*	83,818*
Director of Podiatric Service	63,135	79,975*
Director of Chaplain Service	63,135	79,975*
Director of Pharmacy Service	63,135	79,975*
Director of Dietetic Service	63,135	79,975*
Director of Optometric Service	63,135	79,975*

Physician and Dentist Schedule

Director grade	$63,135	$79,975*
Executive grade	58,297	75,784*
Chief grade	53,830	69,976
Senior grade	45,763	59,488
Intermediate grade	38,727	50,346
Full grade	32,567	42,341
Associate grade	27,172	35,326

Clinical Podiatrist and Optometrist Schedule

Chief grade	$53,830	$69,976
Senior grade	45,763	59,488
Intermediate grade	38,727	50,346
Full grade	32,567	42,341
Associate grade	27,172	35,326

Nurse Schedule

Director grade	$53,830	$69,976
Assistant Director grade	45,763	59,488
Chief grade	38,727	50,346
Senior grade	32,567	42,341
Intermediate grade	27,172	35,326
Full grade	22,458	29,199
Associate grade	19,326	25,122
Junior grade	16,521	21,480

*** The rate of basic pay is limited to the rate payable for level III of the Executive Schedule, which is $75,800.
** The rate of basic pay is limited to the rate payable for level IV of the Executive Schedule, which is $74,500.
* The rate of basic pay is limited to the rate payable for level V of the Executive Schedule, which is $70,800.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

ES-1	the lesser of the rate in effect from time to time for GS-16, step 5, and 89.2 percent of the rate in effect from time to time for level V of the Executive Schedule, rounded to the nearest multiple of $100.
ES-2	the sum, rounded to the nearest multiple of $100, of the rate for ES-1 and 22.5 percent of the difference between that rate and the rate in effect from time to time for level IV of the Executive Schedule.
ES-3	the sum, rounded to the nearest multiple of $100, of the rate for ES-2 and 22.5 percent of the difference between the rate for ES-1 and the rate in effect from time to time for level IV of the Executive Schedule.
ES-4	the sum, rounded to the nearest multiple of $100, of the rate for ES-3 and 22.5 percent of the difference between the rate for ES-1 and the rate in effect from time to time for level IV of the Executive Schedule.
ES-5	the sum, rounded to the nearest multiple of $100, of the rate for ES-4 and 16.2 percent of the difference between the rate for ES-1 and the rate in effect from time to time for level IV of the Executive Schedule.
ES-6	the rate in effect from time to time for level IV of the Executive Schedule.

SCHEDULE 5--EXECUTIVE SCHEDULE

level I	$ 88,800
level II	77,400
level III	75,800
level IV	74,500
level V	70,800

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

Vice President	$100,800
Senators	77,400
Members of the House of Representatives	77,400
Delegates to the House of Representatives	77,400
Resident Commissioner from Puerto Rico	77,400
President pro tempore of the Senate	87,600
Majority leader and minority leader of the Senate	87,600
Majority leader and minority leader of the House of Representatives	87,600
Speaker of the House of Representatives	100,800

SCHEDULE 7--JUDICIAL SALARIES

Chief Justice of the United States	$111,700
Associate Justices of the Supreme Court	107,200
Circuit Judges	85,700
District Judges	81,100
Judges of the Court of International Trade	81,100
Judges of the United States Claims Court	72,300
Bankruptcy Judges	70,500

SCHEDULE 8—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

PART I—MONTHLY BASIC PAY

PAY GRADE	YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)													
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
COMMISSIONED OFFICERS														
O-10†	$5378.10	$5567.70	$5567.70	$5567.70	$5567.70	$5781.00	$5781.00	$6223.50*	$6223.50*	$6668.70*	$6668.70*	$7115.10*	$7115.10*	$7558.50*
O-9	4766.70	4891.50	4995.60	4995.60	4995.60	5122.50	5122.50	5335.80	5335.80	5781.00	5781.00	6223.50*	6223.50*	6668.70*
O-8	4317.30	4446.60	4552.20	4552.20	4552.20	4891.50	4891.50	5122.50	5122.50	5335.80	5567.70	5781.00	6012.90*	6012.90*
O-7	3587.40	3831.30	3831.30	3831.30	4002.90	4002.90	4235.10	4235.10	4446.60	4891.50	5227.80	5227.80	5227.80	5227.80
O-6	2658.90	2921.40	3112.50	3112.50	3112.50	3112.50	3112.50	3112.50	3218.10	3727.20	3917.70	4002.90	4235.10	4593.30
O-5	2126.40	2497.20	2669.70	2669.70	2669.70	2669.70	2750.70	2898.30	3092.70	3324.00	3514.80	3621.30	3747.60	3747.60
O-4	1792.50	2182.80	2328.30	2328.30	2371.50	2476.20	2645.10	2793.90	2921.40	3049.50	3133.80	3133.80	3133.80	3133.80
O-3††	1665.90	1862.40	1990.80	2202.90	2308.20	2391.30	2520.60	2645.10	2710.20	2710.20	2710.20	2710.20	2710.20	2710.20
O-2††	1452.60	1586.40	1905.60	1969.80	2011.20	2011.20	2011.20	2011.20	2011.20	2011.20	2011.20	2011.20	2011.20	2011.20
O-1††	1260.90	1312.80	1586.40	1586.40	1586.40	1586.40	1586.40	1586.40	1586.40	1586.40	1586.40	1586.40	1586.40	1586.40
COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE SERVICE AS ENLISTED MEMBERS AND/OR WARRANT OFFICERS														
O-3	-----	-----	-----	2202.90	2308.20	2391.30	2520.60	2645.10	2750.70	2750.70	2750.70	2750.70	2750.70	2750.70
O-2	-----	-----	-----	1969.80	2011.20	2074.80	2182.80	2266.20	2328.30	2328.30	2328.30	2328.30	2328.30	2328.30
O-1	-----	-----	-----	1586.40	1694.70	1757.10	1820.70	1884.00	1969.80	1969.80	1969.80	1969.80	1969.80	1969.80

* Basic pay is limited to the rate of basic pay payable for level V of the Executive Schedule, which is $5,900.10 per month.

† While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is $8,340.00*, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

†† Does not apply to commissioned officers who have been credited with over 4 years' active service as enlisted members and/or warrant officers.

SCHEDULE 8—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
						WARRANT OFFICERS								
W-4	$1697.10	$1820.70	$1820.70	$1862.40	$1947.00	$2032.80	$2118.30	$2266.20	$2371.50	$2454.60	$2520.60	$2601.90	$2688.90	$2898.30
W-3	1542.30	1673.10	1673.10	1694.70	1714.50	1839.90	1947.00	2011.20	2074.80	2136.60	2202.90	2288.40	2371.50	2454.60
W-2	1350.90	1461.60	1461.60	1504.20	1586.40	1673.10	1736.70	1800.30	1862.40	1927.50	1990.80	2053.80	2136.60	2136.60
W-1	1125.60	1290.60	1290.60	1398.30	1461.60	1524.30	1586.40	1652.10	1714.50	1778.10	1839.90	1905.60	1905.60	1905.60
						ENLISTED MEMBERS								
E-9†	———	———	———	———	———	———	1974.00	2018.70	2064.30	2111.70	2158.80	2200.80	2316.60	2541.90
E-8	———	———	———	———	———	1655.70	1702.80	1747.50	1793.10	1840.20	1882.80	1929.00	2042.40	2270.10
E-7	1155.90	1247.70	1294.20	1339.20	1385.10	1429.20	1474.80	1520.70	1589.40	1634.70	1680.30	1702.20	1816.50	2042.40
E-6	994.50	1083.90	1129.20	1177.20	1221.00	1265.40	1311.90	1379.40	1422.60	1468.50	1491.00	1491.00	1491.00	1491.00
E-5	872.70	950.10	996.00	1039.50	1107.60	1152.60	1198.50	1242.60	1265.40	1265.40	1265.40	1265.40	1265.40	1265.40
E-4	814.20	859.50	909.90	980.70	1019.40	1019.40	1019.40	1019.40	1019.40	1019.40	1019.40	1019.40	1019.40	1019.40
E-3	766.80	808.80	841.50	874.80	874.80	874.80	874.80	874.80	874.80	874.80	874.80	874.80	874.80	874.80
E-2	738.00	738.00	738.00	738.00	738.00	738.00	738.00	738.00	738.00	738.00	738.00	738.00	738.00	738.00
E-1††	658.20	658.20	658.20	658.20	658.20	658.20	658.20	658.20	658.20	658.20	658.20	658.20	658.20	658.20
E-1†††	608.40	608.40	608.40	608.40	608.40	608.40	608.40	608.40	608.40	608.40	608.40	608.40	608.40	608.40

† While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $3,089.40, regardless of cumulative years of service computed under 37 U.S.C. 205.

†† Applies to personnel who have served 4 months or more on active duty.

††† Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 3)

Part II—MONTHLY BASIC ALLOWANCE FOR QUARTERS RATES

PAY GRADE	Without dependents		With dependents
	Full rate †	Partial rate ††	
COMMISSIONED OFFICERS			
O-10	$570.00	$50.70	$701.10
O-9	570.00	50.70	701.10
O-8	570.00	50.70	701.10
O-7	570.00	50.70	701.10
O-6	523.20	39.60	636.00
O-5	493.80	33.00	585.90
O-4	452.70	26.70	535.50
O-3	366.60	22.20	446.40
O-2	295.20	17.70	382.80
O-1	253.20	13.20	343.20
WARRANT OFFICERS			
W-4	$414.90	$25.20	$481.50
W-3	350.40	20.70	430.80
W-2	315.30	15.90	402.60
W-1	266.70	13.80	351.00
ENLISTED MEMBERS			
E-9	$334.50	$18.60	$456.00
E-8	309.90	15.30	424.80
E-7	264.60	12.00	395.10
E-6	234.90	9.90	358.50
E-5	217.20	8.70	318.60
E-4	188.40	8.10	275.40
E-3	183.00	7.80	253.20
E-2	155.40	7.20	253.20
E-1	141.60	6.90	253.20

† Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by title 37, United States Code, and part IV of Executive Order 11157, as amended.

†† Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(d) and part IV of Executive Order 11157, as amended.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 4)

Part III--BASIC ALLOWANCE FOR SUBSISTENCE RATES

Officers (per month)	$112.65

Enlisted Members (per day):

	E-1 (less than 4 months' active duty)	All Other Enlisted
When on leave or authorized to mess separately	$4.96	$5.37
When rations-in-kind are not available	$5.61	$6.07
When assigned to duty under emergency conditions where no messing facilities of the United States are available	$7.43	$8.03

Part IV--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c) of title 37, United States Code, is $494.40.

[FR Doc. 87-331
Filed 1-5-87; 11:21 am]
Billing code 3195-01-C

Presidential Documents

Executive Order 12579 of December 31, 1986

President's Advisory Committee on Mediation and Conciliation

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to extend the life of the President's Advisory Committee on Mediation and Conciliation, it is hereby ordered that Section 4(b) of Executive Order No. 12462 of February 17, 1984, as amended, is further amended to read: "The Committee shall terminate on December 31, 1987, unless sooner extended."

Ronald Reagan

THE WHITE HOUSE,
December 31, 1986.

[FR Doc. 87-332
Filed 1-5-87; 11:22 am]
Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 52, No. 3

Tuesday, January 6, 1987

INFORMATION AND ASSISTANCE

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PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-5240
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-228.....2
229-388.....5
389-516.....6

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive orders:
12462 (Amended by EO 12579).....515
12496 (Superseded by EO 12578).....505
12578.....505
12579.....515
Proclamations:
5595.....229
Administrative Orders:
Memorandums:
December 30, 1986.....231, 233
Jan. 2, 1987.....389

5 CFR

534.....1
890.....2

7 CFR

2.....235
907.....240
910.....241
1036.....241
1944.....243
1951.....243
Proposed Rules:
301.....291
318.....292
925.....432
944.....432
1930.....296

8 CFR

103.....3

9 CFR

307.....3
318.....5
350.....3
351.....3
354.....3
355.....3
362.....3
381.....3

10 CFR

61.....397

12 CFR

Proposed Rules:
563.....60

13 CFR

121.....397

14 CFR

Proposed Rules:
39.....435
71.....81, 297

15 CFR

22.....6
399.....405

16 CFR

13.....253, 254
1034.....405
1750.....405

18 CFR

2.....9
37.....11
Proposed Rules:
11.....82

19 CFR

4.....254
24.....255

21 CFR

178.....406

23 CFR

Proposed Rules:
658.....298

25 CFR

256.....38
272.....38

26 CFR

1.....39, 40, 409, 409
602.....40
Proposed Rules:
1.....83, 438

28 CFR

51.....486

29 CFR

1601.....42
2644.....256
Proposed Rules:
2520.....84

31 CFR

5.....43-51
51.....414

32 CFR

Proposed Rules:
230.....90

33 CFR

Proposed Rules:
110.....90

38 CFR

Proposed Rules:
13.....300

LIST OF PUBLIC LAWS

Note: The listing of public laws enacted during the second session of the 99th Congress has been completed.

Last listing: November 20, 1986.

The listing will be resumed when bills are enacted into public law during the first session of the 100th Congress which convenes on January 6, 1987.